

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

3 - - - - -

4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown &

14 Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.,

19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22

23 DEPOSITION OF CHRISTOPHER J. PROCTOR

24 Volume I, Pages 1 - 309

25

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1           (The following is the deposition of  
2 CHRISTOPHER J. PROCTOR, taken pursuant to Notice of  
3 Taking Deposition by Rule 30.02(f), by videotape, at  
4 the offices of Simpson Thacher & Bartlett, Attorneys  
5 at Law, 425 Lexington Avenue, New York, New York, on  
6 August 12, 1997, commencing at approximately 8:36  
7 o'clock a.m.)

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11

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18	589	13th July 1973 B.A.T.:	
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6                     Health," paper by Dr. F.G.  
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1           599    1.3.57 Report No. RD.14 -  
2                   R, Smoke Group, Programme  
3                   for coming 12-16 week period,  
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1 P R O C E E D I N G S

2 (Plaintiffs' Exhibit 584 was marked  
3 for identification.)

4 MR. SHEFFLER: Before we begin the  
5 deposition, let me make two objections with respect  
6 to this proceeding today. Dr. Proctor is here today  
7 pursuant to a amended deposition notice that was  
8 served on B.A.T. Industries and the British-American  
9 Tobacco Company Limited for a 30.02(f) witness on a  
10 list of eight purported subjects. We object insofar  
11 as the list in the amended notice of deposition  
12 includes subjects six, seven and eight: collection  
13 and production of Category II documents in this  
14 litigation; advertising, marketing, promotion of  
15 cigarettes; and youth smoking. There have been  
16 numerous discussions between counsel for plaintiffs  
17 and defendants with respect to the scope of this  
18 deposition. The discussion could not be more clear  
19 that B.A.T. Industries and the British-American  
20 Tobacco Company were asked to produce a witness to  
21 address only the topics one through five: public  
22 statements relating to the health effects of smoking  
23 and addiction and scientific research; health effects  
24 of smoking; addiction; research and development  
25 activities; and the control of nicotine and other

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1 reinforcing substances in cigarettes and design and  
2 manufacture of cigarettes re same.

3 That is what Dr. Proctor is prepared to address  
4 and that is what we intend to have this deposition  
5 limited to because those were the subject matters  
6 discussed. To the extent that the deposition notice  
7 as served purports to require B.A.T. Industries or  
8 British-American Tobacco Company to produce a witness  
9 for six, seven and eight, those subjects are not part  
10 of this deposition pursuant to our discussions.

11 Secondly, counsel for the plaintiffs have served  
12 upon us a predesignated list of documents. We object  
13 to the manner in which counsel has selected to serve  
14 those documents. We received a list of some 500  
15 documents comprising over 6,000 pages of material  
16 designated to -- for use for this deposition. To  
17 expect that counsel in five days could review those  
18 documents and prepare Dr. Proctor for this deposition  
19 is ridiculous. It took us an entire day just to  
20 retrieve and copy this voluminous set of documents.

21 Now, the review which we were able to do of  
22 these documents demonstrates that they deal with a  
23 wide range of topics. There's many subjects which  
24 are totally irrelevant to the topics listed for this  
25 deposition. In addition, some of the documents

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1 appear to be single pages of -- of a multi set. The  
2 first and second pages of complete R&D reports  
3 were -- were produced, and it demonstrates a complete  
4 lack of selectivity on the part of the plaintiffs, a  
5 lack of selectivity that was -- is especially  
6 egregious in light of the meet and confers which were  
7 had with respect to the 30.02(f) depositions. In  
8 those meet and confers was recognized that the topics  
9 one through five, which are the subject of this  
10 deposition, were overly broad, cover a wide range of  
11 materials, millions of pages of documents and over 40  
12 years of history. During the meet and confers,  
13 plaintiff re -- plaintiffs' counsel represented that  
14 they would limit the scope and define the scope of  
15 these topics through their designation of documents.

16 By designating over 500 documents, there has  
17 been absolutely no attempt to give the counsel for  
18 defendants any idea of the scope or no attempt to  
19 limit in any way the overbreadth of these topics.  
20 There can be no reasonable expectation for counsel to  
21 expect to use even a tenth of the documents she has  
22 designated for this deposition, and we believe and  
23 object on the grounds that the predesignation of all  
24 these documents is not in the spirit or the letter of  
25 the judge's order on predesignation and certainly is

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1 contrary to counsel's representations in the meet and  
2 confer with respect to these 30.02(f) depositions.

3 Subject to those -- those objections, we will  
4 proceed with the deposition and do the best that we  
5 can.

6 MS. WIVELL: Well I'm going to respond to  
7 the statement you've made.

8 Number one, we have already taken the deposition  
9 of Martyn Gilbey on point six of the deposition  
10 notice, which will be marked as Plaintiffs'  
11 Exhibit -- which has already been marked as  
12 Plaintiffs' Exhibit 584. I never agreed not to  
13 include points seven and eight, nor have any of my  
14 colleagues agreed not to include points seven and  
15 eight in the deposition. The deposition was noticed  
16 for eight points. We've taken point six.

17 I have reviewed the transcripts of the two meet  
18 and confers that are on the record concerning this  
19 deposition, and there is no -- none of the concerns  
20 that you expressed here are in those meet-and-confer  
21 transcripts and there is no indication on behalf of  
22 the plaintiffs that they are going to limit their  
23 deposition to points one through five. I did not say  
24 that we were going to limit our deposition to points  
25 one through five in the meet and confers I had with

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1 defense counsel, and I don't know where you get the  
2 idea that therefore you can unilaterally limit the  
3 scope of this deposition, which was properly  
4 noticed. That's point number one.

5 Point number two: Your statement about 500  
6 documents is inaccurate. It's just not correct.  
7 There are some over 400 documents which were  
8 designated for this deposition, not 500. They all  
9 concern the subjects in one way or another that are  
10 listed on Plaintiffs' Exhibit 584. We did the  
11 predesignation in conn -- as the court directed. I  
12 would like to point out that defense counsel has in  
13 the past in depositions which have been taken of the  
14 State of Minnesota and Blue Cross Blue Shield  
15 designated well over 500 documents and in fact I  
16 believe it's 30,000 pages of testimony and in fact in  
17 one point served a designation or a supplemental  
18 designation on our office during the time that a  
19 deposition was going on.

20 So I don't believe that our designation of  
21 documents in any way violates any court order or  
22 prohibited you from preparing. I notice that you  
23 have a number, three -- at least six, seven lawyers  
24 sitting here today for this deposition, and I'm  
25 assuming that since you have demonstrated to us in

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1 Martyn Gilbey's deposition and Martyn Gilbey  
2 testified about the various computer indices that you  
3 have, that you have -- perfectly capable of  
4 retrieving those documents.

5       Furthermore, while we may only use a portion of  
6 those documents at this deposition, depending upon  
7 the witness -- what the witness says, we may use  
8 others that we had not planned on using in our case  
9 in chief simply to cross-examine him about claims  
10 that he may make while responding to documents we had  
11 planned on using in our examination in chief. So we  
12 have to designate documents beyond those that we  
13 might actually intend to use in our examination for  
14 either cross-examination or response to your direct  
15 examination, should you have some, and that's a  
16 problem I understand and that's a problem we've all  
17 been living with because so far my designation hasn't  
18 come even close to some of the designations which the  
19 defendants have served on the plaintiffs and which  
20 we've had to live with. And the court's well aware  
21 of the voluminous nature of some of the designations  
22 that the defendant -- defendants have made on the  
23 plaintiffs.

24       That say -- that said, I think we should go  
25 forward with the deposition.

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1           MR. SHEFFLER: Let me just respond and very  
2 brief. I would refer you to a July 18th, 1997  
3 correspondence between Mr. McCormack of my office and  
4 you which reflects the discussions we had with  
5 respect to the scope. I don't think it could be more  
6 clear. Having said that, go ahead.

7           MS. WIVELL: Well that reflects  
8 Mr. McCormack's view of the discussions which we had,  
9 not my accession to those views.

10          MR. SHEFFLER: And you did not send any  
11 correspondence to correct --

12          MS. WIVELL: That -- I was in London,  
13 Counsel, as you well know taking depositions at the  
14 time that that letter was sent. In fact, I think  
15 it -- what's the date of that letter?

16          MR. SHEFFLER: July 18th, 1997.

17          MS. WIVELL: We were actually taking  
18 depositions at the time that letter was sent by  
19 Mr. McCormack or --

20          MR. SHEFFLER: Why don't we proceed with  
21 the questions and we'll see how we go.

22          MS. WIVELL: All right.

23               (Witness sworn.)

24                       CHRISTOPHER J. PROCTOR

25               called as a witness, being first duly

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1           sworn, was examined and testified  
2           as follows:

3                           ADVERSE EXAMINATION

4 BY MS. WIVELL:

5 Q.    Would you tell the ladies and gentlemen of the  
6 jury your name.

7 A.    Christopher John Proctor.

8 Q.    And by whom are you employed?

9 A.    British-American Tobacco Company Limited.

10 Q.   How long have you been employed by

11 British-American Tobacco Company Limited?

12 A.   I've been employed a couple of times, the first  
13 time for approximately seven years, slightly less,  
14 and -- and -- and then since 1993 to the current  
15 date.

16 Q.   All right. What do you do --

17       By the way, can we call British-American Tobacco  
18 Company Limited BATCO?

19 A.   That will be fine, if that's the way you want to  
20 refer to it.

21 Q.   All right. Well that's the way it's referred to  
22 it by employees of the company, isn't it?

23 A.   Some will say "BATCO." I tend to say  
24 "British-American Tobacco," but "BATCO" is fine.

25 Q.   All right. What do you do for BATCO?

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1 A. I'm the head of science and regulation as a part  
2 of a -- a group of British-American Tobacco which is  
3 called consumer and regulatory affairs.

4 Q. How long have you held that position?

5 A. It's a relatively new position in the company,  
6 and I've held that, oh, I guess about a year and a  
7 half.

8 Q. Before you held that position, what did you do?

9 A. I was the head of smoking issues, both of which  
10 are -- were similar jobs.

11 Q. And when did you become the head of smoking  
12 issues?

13 A. When I joined the company in 1993.

14 Q. All right. Have we talked about all the  
15 positions you've held since you rejoined BATCO in  
16 1993?

17 A. Those are the two, yes.

18 Q. Now you said you were with BATCO for seven years  
19 before then.

20 A. Yes. I was employed at the research  
21 establishment in Southampton, which had various names  
22 during that time, but from 1983 through till pretty  
23 much the end of 1989 I held various scientific  
24 positions there.

25 Q. All right. Did you start with BATCO in 1983?



1 A. Yes, that was my first job, and I'm not sure  
2 whether it was BATCO or British-American Tobacco  
3 (U.K. & Export). There were various employment  
4 contracts during that time, but generally I think  
5 British-American Tobacco Company Limited.

6 Q. And what position did you have when you began in  
7 1983?

8 A. I started off as a research scientist.

9 Q. Did that change?

10 A. No. I -- I continued being a research scientist  
11 through my -- my period in -- in R&D, but taking  
12 various different positions within the research  
13 establishment.

14 Q. What department were you in --

15 A. I --

16 Q. -- when you started?

17 A. I started in a group that looked at analytical  
18 chemistry and focused very much on research in  
19 relation to environmental tobacco smoke.

20 Q. Who was your supervisor?

21 A. I had several. My initial supervisor was a  
22 gentleman called Mr. Dymond.

23 Q. And after that?

24 A. If I can remember, I think at one stage a  
25 Dr. Binns.

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1 Q. And after that?

2 A. Let me try and remember. I think a Dr. Baker,  
3 but I can't remember entirely who I was -- who I was  
4 directly reporting to.

5 Q. Now did you ever be -- during the -- strike  
6 that. Let me begin again.

7 From the period 1983 to 1989, did you stay  
8 within the analytical chemistry area?

9 A. Sort of. I mean, what I did was -- was to build  
10 my own group of research there focusing upon  
11 environmental tobacco smoke, various aspects of that  
12 type of research.

13 Q. Now by "environmental tobacco smoke," do you  
14 mean sidestream smoke?

15 A. No. I mean tobacco smoke present in the air.  
16 Sidestream smoke is a smoke which just comes off the  
17 end of the cigarette, and I have done some research  
18 in relation to that and in fact developed a technique  
19 whereby you could measure sidestream smoke.

20 Q. So by "environmental tobacco smoke," you would  
21 include that which is exhaled by the smoker?

22 A. Yeah. I mean, environmental tobacco smoke would  
23 be smoke found in a room and that would arise  
24 primarily from sidestream smoke and exhaled smoke,  
25 but it would be diluted in the air.

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1 Q. All right. Did I ask you if you became a  
2 supervisor during the period 1983 to 1989?

3 A. If by "supervisor" you mean did I have staff  
4 working for me, then in -- in various times, yes.

5 Q. All right. Well why don't you explain to the  
6 ladies and gentlemen the progression of your work  
7 from 1983 to 1989.

8 A. Okay, as far as I can remember. The first set  
9 of research that I undertook was really developing a  
10 variety of analytical techniques, analytical  
11 techniques trying to measure sidestream smoke, which  
12 is quite a complex thing to do in a standardized  
13 manner. We developed a system called a fishtail  
14 chimney system that was published in a journal called  
15 "The Analyst" I think in about 1988, which has been,  
16 I mean, not widely accepted, but certainly has become  
17 part of -- of the standardized techniques to try and  
18 evaluate sidestream smoke and measure it in a -- in a  
19 way which is consistent. We also did a lot of  
20 research trying to find ways to measure environmental  
21 tobacco smoke, various constituents of environmental  
22 tobacco smoke, again in a standardized manner. And  
23 that we did both in the laboratory setting -- we  
24 built rooms where we could produce a controlled  
25 amount of environmental tobacco smoke -- and in

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1 external environment. So for example, we did a study  
2 whereby we -- we tried to assess the exposure of  
3 nonsmoking people in a city in the middle of the  
4 country called Birmingham, and again, I mean, both  
5 those areas of research we researched and we wrote up  
6 and we published in the open literature.

7 Q. Now have you described all of the positions that  
8 you've had from 1983 to 1989 at either BATCO or  
9 BATUKE?

10 A. As much as I can. Right -- right before I left  
11 the company, I was also given an area called  
12 chemosensory research for a very short period and it  
13 wasn't an area that I really got into. So the -- the  
14 job titles varied at different points of time, but  
15 what I tried to broadly explain is the areas of  
16 research that I undertook, and at various times  
17 during that period I would have had different people  
18 working under me on those types of areas.

19 Q. Now you mentioned chemosensory research. What  
20 do you understand that area to include?

21 A. No, it was -- it was sensory research. Did I  
22 misspeak? I'm sorry.

23 Q. All right. Well let me ask you this: Were you  
24 involved in chemosensory research?

25 A. As I said, what -- an area of research that was

1 started again within -- in the research establishment  
2 in 1989 was to look at chemosensory research, and --  
3 and what was meant by that was trying to identify the  
4 chemistry related to the taste of tobacco smoke. But  
5 it's an area that I just started to get involved in  
6 and -- and then decided to leave the company at that  
7 stage.

8 Q. When you left the company, where did you go?

9 A. I -- I left the company entirely and went to  
10 work in Washington, D.C.

11 Q. For what group?

12 A. I became a -- a senior scientific advisor for a  
13 law firm called Covington & Burling.

14 Q. And you actually became an employee of  
15 Covington & Burling?

16 A. Yes, I did.

17 Q. And what were your responsibilities at  
18 Covington & Burling?

19 A. Providing advice to the attorneys on various  
20 scientific matters.

21 Q. Including tobacco additives?

22 MR. SHEFFLER: Objection, and I think this  
23 may go into the area of work product. I'm going to  
24 instruct the witness not to answer.

25 Q. How long were you a senior research scientist at

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1 Covington & Burling?

2 A. I was a senior scientific advisor with Covington  
3 Burling from I think about January 1990 through to  
4 the middle of '93 when I returned to British-American  
5 Tobacco Company Limited.

6 Q. Now just so the ladies and gentlemen are clear,  
7 Covington & Burling is a law firm that advises  
8 various tobacco companies, doesn't it?

9 MR. SHEFFLER: Objection.

10 Q. I'm sorry?

11 A. Covington Burling is a law firm based in  
12 Washington that has a whole series of clients. One  
13 of those clients certainly when I was employed was  
14 The Tobacco Institute.

15 Q. And Covington Burling also had various tobacco  
16 manu -- I'm sorry, strike that.

17 Covington & Burling also had various cigarette  
18 manufacturers as clients while you were employed  
19 there; right?

20 A. Yes. There would have been advice I think given  
21 by Covington Burling to -- to various cigarette  
22 manufacturers.

23 Q. And so in your position as a research advisor to  
24 Covington & Burling, you provided advice to The  
25 Tobacco Institute; is that right?

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1 A. No.

2 MR. SHEFFLER: Objection.

3 A. I provided advice to the attorneys, who  
4 presumably gave advice to The -- The Tobacco  
5 Institute.

6 Q. And --

7 A. My role was to -- to -- to look at the  
8 scientific data and provide that support to the  
9 attorneys.

10 Q. Okay. Now, as head of science and regulation  
11 for BATCO, what do your job responsibilities  
12 currently include?

13 A. Yeah, let me try and explain the role of -- of  
14 the group. The consumer and regulatory affairs  
15 department is responsible for -- for public  
16 statements in relation to -- to anything related to  
17 the British-American Tobacco Company's business.  
18 Science and regulation is very much focused upon  
19 acquiring a full understanding of -- of the  
20 scientific literature in relation to smoking and  
21 health, and in -- in addition to that I chair a group  
22 called the Scientific Research Group, which funds  
23 independent research at various universities, looking  
24 into scientific research related to smoking and  
25 health.

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1 Q. Now you mentioned a consumer and regulatory  
2 affairs department and then you mentioned science and  
3 regulation. Are they two different departments?

4 A. No. It's -- the over -- the umbrella department  
5 is called consumer and regulatory affairs. Within  
6 that there are four groups of, I guess you could call  
7 it, departments. The one that I head up is -- is  
8 called science and regulation.

9 Q. Who heads the entire department for BATCO?

10 A. There is a board director responsible for  
11 consumer and regulatory affairs, a gentleman called  
12 Mr. -- Mr. Paul Adams.

13 Q. By "board director," which board are you  
14 referring to?

15 A. He is on the board of British-American Tobacco  
16 Holdings Limited.

17 Q. Now British-American Tobacco Holdings Limited  
18 was established last year; isn't that right?

19 A. At the beginning of last year.

20 Q. All right. Was Mr. Adams responsible for the  
21 consumer and regulatory affairs department before  
22 British-American Tobacco Holdings Limited was  
23 established?

24 A. No, it wasn't, and -- and consumer and  
25 regulatory affairs wasn't formed until

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1 British-American Tobacco Holdings was formed. Prior  
2 to that, the department that I ran was called smoking  
3 issues.

4 Q. So would it be fair to say that from 1993 to the  
5 beginning of 1996, you were responsible for a group  
6 called smoking issues at BATCO?

7 A. Yes, I was the head of smoking issues.

8 Q. And what were your responsibilities as head of  
9 smoking issues department at BATCO?

10 A. Very similar to -- to the ones that I hold now  
11 and in terms of evaluating the scientific literature  
12 in relation to smoking and health and also providing  
13 really consistent advice to the company to ensure  
14 that public statements in relation to smoking and  
15 health are -- are given in an accurate manner.

16 Q. Do you have any employees under your control  
17 today?

18 A. Yes, I do.

19 Q. How many?

20 A. Let me count them on my fingers. Sorry. I  
21 have -- I have three people who are a non-office  
22 administrator, so, I mean, they're professional  
23 staff, and I have two office administrators that do  
24 part-time work.

25 Q. All right. Who are the three professional staff

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1 that you have responsibility for?

2 A. There's a gentleman called Mr. Keith Gretton.

3 There's a -- a Anna-Lisa Westergren, who is a  
4 scientist, and there is a Vickie Curtis, who is also  
5 a scientist.

6 Q. And what are Mr. Gretton's areas of  
7 responsibility?

8 A. Mr. Gretton assists in communication on  
9 scientific matters. He's a nonscientist, but he's --  
10 he's been involved in attempts to try and find ways  
11 to express the scien -- the complex scientific  
12 matters related to smoking and health in a manner  
13 which are understandable by the layperson.

14 Q. All right. And Ms. West -- I -- Westergren?

15 A. Westergren, yes.

16 Q. What is her background?

17 A. She is a -- a pharmacologist who has -- who  
18 worked -- this is her first job. She's worked now  
19 with the company for about a year, and she assists me  
20 particularly in -- in ensuring that the Scientific  
21 Research Group and the various scientists involved in  
22 our independent research are provided with any  
23 support that they wish.

24 Q. And how about Ms. Curtis? What's her  
25 educational background?

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- 1 A. She is with a molecular biological background  
2 and she does a lot of work again trying to -- to pull  
3 together the scientific literature, particularly  
4 related to molecular biology, and again also speaks  
5 with independent scientists to try and understand  
6 advances in that science.
- 7 Q. You said she has a medical biological  
8 background. Is she --
- 9 A. I'm sorry, molecular biological.
- 10 Q. Oh, I'm sorry. She's not a doctor?
- 11 A. No. She's -- no, she's not.
- 12 Q. BATCO doesn't have any doctors on staff, does  
13 it?
- 14 A. A physician?
- 15 Q. Physicians.
- 16 A. No, not that I'm aware of.
- 17 Q. And in fact, the entire time you've been with  
18 BATCO, BATCO has never had any physicians on its  
19 staff, has it?
- 20 A. Not that I'm aware of.
- 21 Q. And in fact, thinking back over what you know  
22 about BATCO, BATCO has never had any physicians on  
23 its staff, has it?
- 24 A. Not that I'm aware of.
- 25 Q. And your background is not a --

- 1           And you are not a physician, are you?
- 2   A.    No.
- 3   Q.    What's your background, sir?
- 4   A.    My -- my background is in physical chemistry.
- 5   My Ph.D. was in mass spectrometry, and then I did
- 6   postdoctoral research at Cornell University in -- in
- 7   New York state looking at techniques whereby we could
- 8   identify biological materials working with New York
- 9   University using the technique of mass spectrometry.
- 10   I then did a further postdoctoral research looking at
- 11   detecting environmental exposures using various
- 12   techniques.
- 13   Q.    Now, sir, you understand that you are here today
- 14   because we served a deposition notice on B.A.T.
- 15   Industries and BATCO; right?
- 16   A.    Yes.
- 17   Q.    Sir, showing you what's been marked as
- 18   Plaintiffs' Exhibit 584, have you seen this document
- 19   before?
- 20   A.    Yes, I have seen this before.
- 21   Q.    All right. This is the deposition notice for
- 22   the deposition that you've agreed to be the
- 23   spokesperson here today for; right?
- 24   A.    Yes.
- 25   Q.    All right. Now, you read it over?

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- 1 A. Can I just take a second and reread it just to  
2 make sure I'm --
- 3 Q. Well have you read it before?
- 4 A. I've -- I've read it very briefly before.
- 5 Q. You understand that there are eight topics  
6 listed on the second page of this Exhibit 584;  
7 right?
- 8 A. Yes, I see eight topics listed.
- 9 Q. All right. And do you understand that we have  
10 already taken the deposition of B.A.T. Industries and  
11 BATCO on point number six?
- 12 A. I didn't know that before, but I heard your  
13 previous statement on that.
- 14 Q. All right. Now, sir, do you understand that the  
15 deposition we're taking here today is pursuant to  
16 Rule 30.02(f) of the Minnesota Rules of Civil  
17 Procedure?
- 18 A. I've been explained what that means and I think  
19 I pretty much understand what it means.
- 20 Q. All right. Do you understand that Exhibit 584  
21 requires B.A.T. Industries and BATCO to produce a  
22 person qualified to testify as to matters known or  
23 reasonably known to them concerning the subjects in  
24 this deposition notice?
- 25 A. Yes.

1 MR. SHEFFLER: Objection to the extent it  
2 calls for a legal conclusion.

3 Q. Well you understand that this deposition notice  
4 is to a corporation -- to the two corporations,  
5 B.A.T. Industries P.L.C. and BATCO; right?

6 A. That's my understanding.

7 Q. All right. Do you understand that you have been  
8 designated as a corporate representative of those two  
9 corporations to speak on their behalf at this  
10 deposition?

11 MR. SHEFFLER: Objection to the form. Go  
12 ahead.

13 A. Yeah, that's what I understand.

14 Q. All right. And you understand that at this  
15 deposition you are speaking for both BATCO and B.A.T.  
16 Industries; right?

17 MR. SHEFFLER: Objection to the form. You  
18 may answer.

19 A. That's what I understand.

20 Q. All right. And you've consented to speak for  
21 those two corporations at this deposition today?

22 A. Yes, I have.

23 Q. Now you understand that your testimony here  
24 today is binding on B.A.T. Industries and BATCO?

25 MR. SHEFFLER: Objection to the form.

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1 MR. FRANKEL: Objection.

2 MR. SHEFFLER: Yeah, objection to the form  
3 to the extent it calls for some kind of legal  
4 conclusion.

5 A. I'm not sure what it means by "binding."

6 Q. Well --

7 A. I mean, what I -- what I'm certainly here today  
8 is to provide you with as much help as possible from  
9 my knowledge.

10 Q. Okay. And also the knowledge of the two  
11 corporations; right?

12 A. Yeah, to the extent that I know it, and I think  
13 I know it fairly well.

14 Q. All right. And you have authority to speak on  
15 behalf of B.A.T. Industries and BATCO, don't you?

16 MR. SHEFFLER: Objection to the form to the  
17 extent it calls for a legal conclusion.

18 A. Am I supposed to answer? I guess the answer is  
19 probably yes.

20 Q. Okay. And so it would be fair to say that for  
21 this deposition you're B.A.T. Industries' and BATCO's  
22 spokesperson; right?

23 MR. SHEFFLER: Objection.

24 MR. FRANKEL: Object to form.

25 (Discussion off the stenographic record.)

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1 A. Yes, I guess so.

2 Q. All right. And you're here today acting as

3 B.A.T. Industries' spokesperson; right?

4 MR. SHEFFLER: Objection to the form. Can

5 I -- can we have a clarification? One objection is

6 for all?

7 MS. WIVELL: Yeah.

8 MR. SHEFFLER: Okay. Objection to the

9 form. Do you remember the question?

10 THE WITNESS: No, I'm sorry. Could you --

11 MS. WIVELL: All right.

12 THE WITNESS: -- repeat the question?

13 MS. WIVELL: Certainly.

14 BY MS. WIVELL:

15 Q. You're here today acting as B.A.T. Industries'

16 spokesperson; right?

17 MR. SHEFFLER: Same objection.

18 A. I'm -- I'm here today to -- to represent as much

19 as I can my knowledge of -- of -- of what

20 British-American Tobacco Company's views are and

21 B.A.T. Industries'.

22 Q. Okay. And do you understand that the answers

23 which you give in the depositions to the questions I

24 ask must be as -- answered fully, based not only on

25 what you know but also information available to

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1 B.A.T. Industries and BATCO?

2 MR. SHEFFLER: Objection to the form.

3 A. I mean, I will answer the questions obviously to  
4 the best of my ability.

5 Q. Okay. Well let me ask it this way: What  
6 preparation did you do to get ready for this  
7 deposition today so that you could act as  
8 spokesperson for these two corporations?

9 A. Well, I mean, during the period from 1993  
10 through to 1990 -- well until to the present day,  
11 I've obviously been very significantly involved in  
12 the public positions that British-American Tobacco  
13 Company and -- and since B.A.T. Industries defers to  
14 British-American Tobacco Company Limited on these  
15 types of issues, really to both of those parties.  
16 During that period I've obviously looked at a variety  
17 of things that the company has done in terms of its  
18 research and also its public statements.

19 In terms of specific preparation, it's really  
20 quite limited. I -- I came over to New York and have  
21 spent the last couple of days trying to prepare  
22 through the -- the various materials that you  
23 submitted.

24 Q. All right. When did you first see Exhibit 584?

25 A. Which is this document?

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1 Q. Yes.

2 A. I guess on Friday morning.

3 Q. All right. Did you ask counsel to provide you  
4 with information about the topics listed in  
5 Exhibit 584 so you could prepare for the deposition?

6 A. No. I felt that I -- I had fairly good  
7 knowledge on -- on the topics, certainly one through  
8 five. I mean, I was advised that it was unlikely  
9 that we would talk about topics six, seven and  
10 eight. I do have some knowledge on that, but not  
11 extensive, and I certainly haven't done any  
12 additional preparation on topics seven and eight.

13 Q. All right.

14 A. I really have little knowledge on six, but so, I  
15 mean, to the best of my ability, I think on topics  
16 one through five they are areas that I was familiar  
17 with before starting to prepare for this deposition.

18 Q. Do you understand that the answers you give  
19 today in this deposition are to be based not only on  
20 what you know personally but also what you learned in  
21 preparation for this deposition?

22 A. Yeah.

23 MR. SHEFFLER: Objection.

24 A. I mean, again I will -- I will answer questions  
25 to the best of my ability and -- and to whatever

1 knowledge I have.

2 Q. Is there anyone else who's better qualified than  
3 you to testify about the subjects in Exhibit 584?

4 MR. SHEFFLER: Objection to the form.

5 A. If you mean as an employee of British-American  
6 Tobacco Company Limited, then given the breadth of  
7 the information that you require, I would say I'm the  
8 best person.

9 Q. Okay. Did you talk to any other company  
10 employees in preparation for this deposition?

11 A. I had about a ten-minute telephone conversation  
12 with Martyn Gilbey, who -- who told me pretty much  
13 what it was likely to be like, but other than that,  
14 I've had no other discussions with people with inside  
15 the company.

16 Q. Is it a matter of concern to BATCO that  
17 cigarettes have been suspected of being a cause of  
18 serious disease to the people who smoke them?

19 MR. FRANKEL: Object to form.

20 A. Is it a matter of concern? I guess the answer  
21 is yes. Clearly British-American Tobacco Company  
22 Limited have right from the early days of -- of  
23 scientific research that have found associations  
24 between smoking and various diseases taken that  
25 research very seriously and undertaken, I believe, a

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1 series of certainly research efforts and funding of  
2 independent research to try and contribute to  
3 people's understanding of these matters.

4 Q. Is it a matter of serious concern to B.A.T.  
5 Industries that the cigarettes which its companies,  
6 its subsidiaries, sell have been alleged to be a  
7 serious cause of disease?

8 MR. FRANKEL: Object to form.

9 A. I mean, British -- B.A.T. Industries takes its  
10 advice from British-American Tobacco Company Limited  
11 on these issues, and I would assume that B.A.T.  
12 Industries and British-American Tobacco have clearly  
13 looked at the scientific literature related to  
14 smoking and health and -- and clearly are -- I don't  
15 know whether the word is "concerned," but certainly  
16 highly involved in the research as it's developed and  
17 an attempt to ensure that we act in a -- in a very  
18 responsible manner.

19 Q. All right, sir. Would you agree that in the  
20 context of smoking and health, that BATCO has an  
21 overriding responsibility towards smokers?

22 MR. SHEFFLER: Objection to form to the  
23 extent it may call for a legal conclusion.

24 A. Your question asked about an overriding --

25 Q. Responsibility.

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1 A. I'm sorry, could you repeat for me?

2 Q. Certainly. Would you agree that in the context  
3 of smoking and health, BATCO has an overriding  
4 responsibility to smokers?

5 MR. SHEFFLER: Same objection.

6 A. I mean, my view is that British-American Tobacco  
7 Company Limited has -- has looked at the research and  
8 has ensured -- has acted responsibly throughout many,  
9 many decades. What is clearly the case is that  
10 public health authorities have provided advice as to  
11 their views on smoking and health. I think we have  
12 been very responsible in that frankly a smoker where  
13 I come from, the United Kingdom, his views on the  
14 smoking-and-health issue would be taken I think  
15 entirely from the views of the public health  
16 authorities.

17 What we have -- have done in terms of a matter  
18 of practice is that we have continued significant  
19 independent research, but we have not made  
20 significant public statements which -- which would --  
21 I mean, which would to the -- the person in the  
22 street, smoker or nonsmoker, give them I think  
23 probably significant alternative views to the ones  
24 that they receive from the public health  
25 authorities.

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1 Q. Move to strike as nonresponsive. Sir, my  
2 question is simply about BATCO, not about any public  
3 health authorities, and I think that we'll probably  
4 get along a little better in this deposition if you  
5 understand I'm not looking for information that the  
6 public health authorities may have provided. I'm  
7 asking for BATCO's information, and I'm going to be  
8 asking for B.A.T. Industries' information, so I'm  
9 going to move to strike as nonresponsive.

10 MR. SHEFFLER: Move to strike counsel's  
11 statements.

12 Q. Sir, my question is this: Does BATCO believe  
13 that in the context of smoking and health it has an  
14 overriding responsibility to the smoker; "yes" or  
15 "no"?

16 MR. SHEFFLER: The question was asked and  
17 answered, and the witness can answer it in any way he  
18 sees fit to properly answer the question.

19 A. Yeah, and I'm -- and I'm sorry and I -- I would  
20 like to get along in this deposition, but, I mean,  
21 the fact is if you -- if you look at, for example,  
22 the United Kingdom, the public's information on these  
23 matters come from the public health authorities. For  
24 British-American Tobacco Company Limited, the key  
25 thing is -- is that we give respect to those public

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1 health authorities, and so we have not done anything  
2 in terms of what the public may understand on these  
3 matters which -- which would veer away from them.

4       So at the end of the day -- and I hope I'm being  
5 responsive to your question. At the end of the day  
6 what is clearly mattered is what smokers have  
7 understood about these matters, and what they've  
8 understood has most clearly come from the public  
9 health authorities.

10 Q. Well are you saying that BATCO doesn't believe  
11 it has a responsibility to smokers?

12       MR. SHEFFLER: Objection,  
13 mischaracterization of the testimony.

14 A. I don't think that's what I said. What I was  
15 trying to explain was that in the real environment, I  
16 mean, a smoker will make its decision or a person  
17 will make its decision whether to smoke or not on the  
18 basis of information provided to them, and  
19 overwhelmingly that information has been that of --  
20 of -- of the government, from the public health  
21 authorities and from physicians.

22 Q. Sir, I'm going to move to strike as  
23 nonresponsive. My question didn't have anything to  
24 do with the decision about how a person smokes. My  
25 question has to do with does BATCO recognize it has a

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1 responsibility to smokers.

2 MR. SHEFFLER: Objection to counsel's  
3 statements. They're inappropriate. And objecting to  
4 the question as asked and answered. You may answer  
5 again.

6 A. I mean, British-American Tobacco, I mean,  
7 clearly understands that -- that there are issues  
8 related to smoking and health and it feels  
9 responsible most certainly to investing in -- in  
10 significant research to obtain a greater  
11 understanding. As a responsible company, I think  
12 what you will see from our history over -- over  
13 decades is that we have given respect to what public  
14 health authorities have -- have said on these  
15 matters.

16 So I mean, there is a set of -- of -- of actions  
17 that British-American Tobacco Company have taken in  
18 terms of researching the issues in-house and -- and  
19 externally and trying to understand the science as  
20 much as -- as is possible, but the fact is for -- for  
21 a smoker or someone who chooses to smoke, it is -- it  
22 is the statements of public health authorities, of  
23 governments, of -- of individual physicians that they  
24 have taken notice of in terms of their choice of  
25 whether to smoke or not.

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1 Q. Move to strike as nonresponsive.

2 MS. WIVELL: Would you please mark that,  
3 sir.

4 The court reporter will give you that.

5 THE WITNESS: Oh, sorry.

6 MR. SHEFFLER: Marti, if you could just  
7 kind of throw it over a little bit farther, it's a  
8 big table and I don't want to keep interrupting by  
9 getting up to get to documents, so if you just throw  
10 it over a little bit more, it will work better.

11 (Discussion off the stenographic record.)

12 (Plaintiffs' Exhibit 585 was marked  
13 for identification.)

14 BY MS. WIVELL:

15 Q. Sir, showing you what's been marked as  
16 Plaintiffs' Exhibit 585, it's Bates numbered  
17 100428118; correct?

18 A. Oh, sorry. I've found where that number is.  
19 It's 100428118. That's the Bates number in the  
20 corner.

21 Q. All right. And it's entitled "ITEM 4 (f),"  
22 BATCO COMPANY "DIVISION, THE USE OF ANIMALS IN  
23 RESEARCH PROGRAMMES"; correct?

24 A. The title here says "ITEM 4," in parentheses  
25 "(f), B.A.T. TOBACCO DIVISION, THE USE OF ANIMALS IN

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1 RESEARCH PROGRAMMES."

2 Q. And it says --

3 MR. SHEFFLER: I object to the use of this  
4 document. It wasn't one of the almost 500 documents  
5 that were predesignated for the use of this  
6 deposition, and therefore I find it -- it completely  
7 objectionable to question the witness upon the  
8 document at this time.

9 MS. WIVELL: Well I believe you're  
10 incorrect.

11 MR. SHEFFLER: Well if you could show me  
12 where it was predesignated, I'll withdraw my  
13 designation, but it's not on a predesignation list  
14 that you supplied to us.

15 BY MS. WIVELL:

16 Q. Sir, looking at the first --

17 MR. SHEFFLER: Maybe --

18 MS. WIVELL: I'm sorry, I would like to go  
19 on --

20 MR. SHEFFLER: Well excuse me.

21 MS. WIVELL: -- if you don't mind  
22 interrupting.

23 MR. SHEFFLER: If you would -- if you would  
24 show me where it is on the predesignated list, I will  
25 withdraw my objection.

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1 MS. WIVELL: You have the list in front of  
2 you, don't you?

3 MR. SHEFFLER: I do, and I just checked it  
4 and it's not on it.

5 MS. WIVELL: And it's not on the  
6 supplemental list?

7 MR. SHEFFLER: And it's not on the  
8 supplemental list.

9 MS. WIVELL: I believe it's on the  
10 supplemental list, but I do believe it's designated.

11 MR. SHEFFLER: Well it's not on the  
12 supplemental list that was dated and sent to us at  
13 the end of business on August 8th, 1997. It's not on  
14 our list.

15 MS. WIVELL: Well I believe it is, and even  
16 if --

17 MR. SHEFFLER: Well we -- we can mark  
18 the -- we can mark the list if you would like as an  
19 exhibit --

20 MS. WIVELL: Excuse me.

21 MR. SHEFFLER: -- but it's not on the list.

22 MS. WIVELL: I know that you're not used to  
23 practicing in the Minnesota litigation, but we do  
24 have a rule that counsel will not interrupt when  
25 another --

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1 MR. SHEFFLER: Well I'm sorry, I wasn't  
2 interrupting you. I think you were interrupting me.

3 My point is and my objection is that you've  
4 designated, predesignated for this deposition, almost  
5 500 documents. The first exhibit that you're going  
6 to use from B.A.T. files is a document that's not on  
7 either of the 500 document designation lists.

8 MS. WIVELL: Well --

9 MR. SHEFFLER: It's my understanding --  
10 even though you're correct I haven't been involved in  
11 many of the depositions, but it's my understanding  
12 after looking at the court's orders that the  
13 documents to be used at the designation are to be  
14 predesignated. This is not on either predesignation  
15 list, unless you have some supplemental list that you  
16 haven't disclosed to us. It's not on the list you've  
17 given us, and I object to the use of it.

18 MS. WIVELL: Well, first of all, I'm  
19 allowed to use for impeachment documents which aren't  
20 on the list, but I believe it's on the list and I'm  
21 not going to take time out right now to go through  
22 and point it out to you. I would like to go on with  
23 the examination.

24 MR. SHEFFLER: Fine. I would like to have  
25 marked for exhibits next in order the --

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1 MS. WIVELL: Fine, you can do that during  
2 your portion of the -- of the examination. We're  
3 going to go on now.

4 MR. SHEFFLER: Under the rules of  
5 Minnesota, I believe it's my right to have exhibits  
6 marked at the time in which they arise. I would like  
7 to have marked next in order the exhibits, the  
8 predesignation list, both supplemental and the list  
9 of August 5, 1997.

10 MS. WIVELL: You can do that at the time of  
11 your testimony. We're going to go on.

12 MR. SHEFFLER: We're going to mark them  
13 now.

14 BY MS. WIVELL:

15 Q. Sir, point one says "In the context of smoking  
16 and health the cigarette manufacturer has an  
17 overriding responsibility towards smokers"; correct?

18 A. That's what it says here, yeah.

19 Q. All right. Do you agree with that, sir? Does  
20 BATCO have in the context of smoking and health an  
21 overriding responsibility towards smokers?

22 MR. SHEFFLER: Continued objection to the  
23 use of the document.

24 A. I mean, it's my view that British-American  
25 Tobacco Company is responsible for research into

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1 smoking and health, and as part of the general  
2 contribution within not only the company but also  
3 externally in the -- in the academic environment, we  
4 should be undertaking research in relation to smoking  
5 and health. I think that's exactly what we have done  
6 for many years.

7 Q. And so you're agreeing that BATCO does have an  
8 overriding responsibility --

9 A. No.

10 Q. -- towards smokers?

11 A. I don't --

12 MR. SHEFFLER: Objection. Doctor, please  
13 just when she finishes her question, let her finish  
14 her question entirely.

15 THE WITNESS: I'm sorry.

16 MR. SHEFFLER: Let me get an objection in  
17 when a question is objectionable, and then you  
18 answer, and she won't interrupt you either.

19 THE WITNESS: Okay. I'm sorry.

20 MR. SHEFFLER: And my objection is to the  
21 form of the question and the fact that it was asked  
22 and answered. You may answer again.

23 A. I don't believe that my answer said yes to  
24 there's an overriding responsibility. What -- what I  
25 tried to say in response to your question, that

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1 issues related to smoking and health are -- are  
2 broadly based. I do agree that British-American  
3 Tobacco Company Limited and -- should and -- and in  
4 fact it has done research in relation to smoking and  
5 health throughout decades. That's a part of a  
6 general contribution of -- of scientific knowledge,  
7 trying to understand the science related to smoking  
8 and health.

9 Q. Move to strike the nonresponsive portions. Let  
10 me ask you this, sir: Do you agree that a  
11 responsible cigarette manufacturer should understand  
12 the health allegations against the cigarettes it  
13 makes?

14 MR. SHEFFLER: Objection to the form.

15 A. Yes, I should say we should understand the  
16 science. I'm not sure about the allegations, but we  
17 should certainly understand the science.

18 Q. All right. Would you agree that it's the  
19 responsibility of a responsible cigarette --  
20 cigarette manufacturer to obtain as much knowledge as  
21 possible about its cigarettes and their effect on  
22 smokers?

23 MR. SHEFFLER: Object to the form.

24 A. I don't know whether it's a responsibility.  
25 It's clearly been a fact that we have attempted

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1 through a significant amount of research and the --  
2 both internally and the funding of external research  
3 to understand as much as -- as possible about  
4 cigarette smoke and its possible effects on human  
5 health.

6 Q. You would agree that it's the responsibility of  
7 a cigarette manufacturer to keep in the forefront of  
8 knowledge about its products; right?

9 MR. SHEFFLER: Objection to the form.

10 A. And again, I mean, I'm not sure what the term  
11 "responsibility" means, but certainly the company  
12 has for many years attempted to ensure that it  
13 understands as much as possible about its own  
14 product. That's why we've undertaken research for  
15 many years.

16 (Plaintiffs' Exhibit 586 was marked  
17 for identification.)

18 THE WITNESS: Thank you.

19 BY MS. WIVELL:

20 Q. Sir, showing you what's been marked as  
21 Plaintiffs' Exhibit 586, this is a document that  
22 begins with Bates number 500006558; correct?

23 A. Yes, it's 500006558.

24 Q. All right. And it's entitled "SMOKING AND  
25 HEALTH, STRATEGIES AND CONSTRAINTS"; right?

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1 A. It has one title, "SMOKING AND HEALTH," and  
2 underneath it says "STRATEGIES AND CONSTRAINTS."

3 Q. Would you please turn to the second page of the  
4 document and look at the last sentence on that page.  
5 There it says "To be effective we must be seen to be  
6 responsible and, within our field, authoritative."

7 Do you see that, sir?

8 A. Yes, it -- it says that at the bottom of page --  
9 it says three on -- on my copy.

10 Q. All right. And you would agree that in order to  
11 be effective as a cigarette manufacturer, BATCO  
12 needed to be responsible within its field; right?

13 MR. SHEFFLER: Object to form.

14 MR. FRANKEL: Objection.

15 A. Again, I mean, we've -- we've discussed this  
16 question and again it depends on -- on what you mean  
17 by "responsible." I believe that British-American  
18 Tobacco certainly should have undertaken research in  
19 relation to smoking and health, and I believe that is  
20 exactly what British-American Tobacco has done.

21 Q. Now, sir, could you turn to the --

22 MR. SHEFFLER: Are you finished with your  
23 answer? Are you finished with your answer?

24 THE WITNESS: I think I had actually.

25 MR. SHEFFLER: Okay.

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1 Q. Could you turn to the page that ends with Bates  
2 number 563.

3 A. Oh, I'm sorry, I'm not very familiar with Bates  
4 numbers. It's sequential pages?

5 Q. Yes, sir. Do you have it?

6 A. I have one which says -- yeah, which is page  
7 seven on the -- the bottom of this document as far as  
8 I can see.

9 Q. It says at the top of that page "For the  
10 research role to be effective it is necessary to keep  
11 in the forefront of knowledge across a wide area not  
12 only of products and laboratory testing but also of  
13 the reaction of smokers to" prod -- "products new and  
14 old and of factors which influence their smoking  
15 behaviour"; correct?

16 A. That's what it states in this document, yes.

17 Q. All right. And, sir, isn't it true that a  
18 responsible manufacturer of cigarettes would do  
19 research to keep in the forefront of knowledge about  
20 their products?

21 MR. SHEFFLER: Objection to the form, also  
22 asked and answered. Go ahead.

23 A. I mean, I think what -- what the statement that  
24 you've -- you've pulled out of this document, which  
25 goes on quite a few pages and I haven't had a chance

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1 to review, but I mean, I think what the -- the -- the  
2 essence of -- of that is that one should have an  
3 understanding of the scientific knowledge. Now that  
4 knowledge may be acquired from science being  
5 undertaken, for example, by the National Cancer  
6 Institute in the United States or whatever, and I  
7 think there is a -- a requirement of some fashion.  
8 I'm not sure exactly how you would frame that  
9 requirement, but there's a requirement to understand  
10 scientific developments to the best of our ability.  
11 I think that's what British-American Tobacco Company  
12 has done.

13 Q. All right. Is it also a responsibility of  
14 B.A.T. Industries to make sure that its companies  
15 that sell cigarettes to the public keep in the  
16 forefront of knowledge about hazards associated with  
17 their product?

18 MR. SHEFFLER: Objection. Objection to the  
19 form.

20 A. I think B.A.T. Industries obviously has an  
21 interest in exactly how its tobacco operations  
22 operate in terms of their understanding of the -- the  
23 science of smoking and health, and they would keep  
24 a -- perhaps you could call it a watching brief. I  
25 mean, it's a responsibility of British-American

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1 Tobacco Company Limited to -- again I think  
2 "responsibility" is a term I'm not quite sure is  
3 easy to define, but it's certainly what  
4 British-American Tobacco Company does, is to try and  
5 understand the science of smoking and health and to  
6 fund research and to undertake research internally.  
7 Q. All right. Well again I'm focusing on -- in  
8 this question about B.A.T. Industries, and is it  
9 incumbent upon them as a company that has  
10 subsidiaries which are selling cigarettes to the  
11 public to be responsible and understand the  
12 allegations associated with the products that their  
13 companies are selling?

14 MR. SHEFFLER: Objection to the form.

15 A. I'm not sure what "incumbent" means, but let --  
16 let me try and answer your question in the -- in a  
17 proper way.

18 I think the fact is that British-American  
19 Tobacco Company has for many years been responsibly  
20 looking at the smoking-and-health data, and I think  
21 that the fact is that B.A.T. Industries and -- rely  
22 upon British-American Tobacco Company to do that  
23 work. I would -- I think that because that effort  
24 has been responsible and certainly B.A.T. Industries  
25 would have been informed of that type of -- of effort

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1 and presumably are comfortable -- are comfortable,  
2 sorry.

3 Q. Now would you agree that for BATCO to be  
4 knowledgeable about its products it would have to keep  
5 in the forefront of what's happening with regard to  
6 cigarette research throughout the world?

7 MR. SHEFFLER: Well objection to the form.  
8 Go ahead.

9 A. I mean, it depends very much what you mean  
10 "forefront." I mean, should -- because if you look  
11 at research related to smoking and health, it will  
12 cover an enormous breadth of area from these days  
13 extremely complex molecular biology. I think it's --  
14 it's -- what British-American Tobacco has done, it's  
15 ensured that it has a broad breadth of knowledge in  
16 relation to that smoking-and-health research and has  
17 been funding independent research into the various  
18 areas that have gone forward on smoking and health.

19 Q. Well, sir, this document at page 563 talks about  
20 "For the research role to be effective it is  
21 necessary to keep in the forefront of knowledge  
22 across a wide area not only of products and  
23 laboratory testing but also ... the reaction of  
24 smokers ..."; correct?

25 A. Yes, it does. It goes on.

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1 Q. All right. Do you agree with that statement?

2 A. I mean, I think that statement is en -- entirely  
3 consistent with what I've -- I've been explaining of  
4 British-American Tobacco Company's behavior, is that  
5 we attempt and in part it's my responsibility to  
6 understand scientific developments in relation to  
7 smoking and health, to fund independent research into  
8 matters related to smoking and health. And I think,  
9 I mean, the term "forefront" is -- and I'm not sure  
10 how that is properly defined or what the intention  
11 was when someone wrote this document in -- when was  
12 it? -- 1975, but my understanding is that to keep in  
13 the forefront you can do that certainly by reviewing  
14 scientific literature. And where there are areas of  
15 research that have been undertaken outside the  
16 company, I think it's entirely sufficient for us  
17 to -- to have an understanding of that research  
18 area.

19 Q. So you would agree that essentially what's  
20 written here in Exhibit 586 is essentially what BATCO  
21 recognizes its responsibilities to be today; right?

22 MR. SHEFFLER: Objection to the form of the  
23 question. You've only read two paragraphs of 586.

24 A. And -- and that was going to be my response. I  
25 mean, but --

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1 Q. What a surprise.

2 A. -- I mean, in terms of -- in terms of, I mean,  
3 the paragraph that you -- you read here on -- on  
4 50006563, what I've said is that I think it is  
5 generally consistent with -- with my view of where  
6 British-American Tobacco has undertaken its -- its  
7 area, and obviously, I mean, taking one paragraph out  
8 of this, as I said, I-don't-know-how-many-page  
9 document, I would have to read everything in detail  
10 to give you some advice as to whether the whole thing  
11 is -- is consistent with where I believe  
12 British-American Tobacco Company is.

13 Q. And has B.A.T. Industries delegated to BATCO the  
14 responsibility to keep in the forefront, as it says  
15 here?

16 MR. SHEFFLER: Objection to the form.

17 A. I mean, B.A.T. Industries is aware that  
18 British-American Tobacco Company Limited undertakes  
19 independent research and undertakes to understand  
20 the -- the smoking-and-health issue as much as  
21 possible. They're informed of that matter. So  
22 I'm -- I'm actually twittering on the end. I  
23 didn't -- I forgot your actual question, if you could  
24 repeat it.

25 Q. Let me rephrase it.

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1           Has B.A.T. Industries delegated to BATCO the  
2   responsibility to -- to keep up with the knowledge of  
3   smoking-and-health issues?

4   A.   Yes.

5           MR. SHEFFLER:   Same objection.

6   A.   Let me answer -- sorry.  Let me answer that.

7           I think, I mean, it's not a case of formal  
8   delegation, and what has clearly happened is that  
9   British-American Tobacco Company does look at the  
10   smoking-and-health science.  We have people like  
11   myself that are responsible for doing that.  On  
12   occasions for information, presentations are given to  
13   B.A.T. Industries to give them a broad understanding  
14   of where the scientific arena is developing, but it's  
15   the responsibility of British-American Tobacco  
16   Company to have the detailed understanding and to  
17   undertake the research in relation to smoking and  
18   health.

19           MR. SHEFFLER:  We've been going a little  
20   bit over an hour.  If this is a convenient time to  
21   break, let's take a break.

22           MS. WIVELL:  Fine.

23           THE REPORTER:  Off the record, please.

24           (Recess taken.)

25   BY MS. WIVELL:

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1 Q. Sir, does BATCO see itself as a responsible  
2 company?

3 MR. SHEFFLER: Object to the form.

4 A. I believe that British-American Tobacco is a  
5 responsible company, yes.

6 Q. All right. Does BATCO see itself as an ethical  
7 company?

8 MR. SHEFFLER: Object to the form.

9 A. Yes.

10 Q. Does B.A.T. Industries see itself as a  
11 responsible company?

12 MR. SHEFFLER: Same objection.

13 A. Yes.

14 Q. Does B.A.T. Industries see itself as an ethical  
15 company?

16 MR. SHEFFLER: Same objection.

17 A. Yes.

18 Q. Are they companies, BATCO and B.A.T. Industries,  
19 that wanted to understand their products?

20 A. I mean, British-American Tobacco Company  
21 Limited --

22 MR. FRANKEL: Object to the form.

23 A. -- if you're talking about tobacco products,  
24 has -- has wanted to understand its products,  
25 absolutely.

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1 Q. All right. And does B.A.T. Industries want to  
2 understand the tobacco products of the -- made by the  
3 companies, its subsidiaries, which sell cigarettes?

4 A. I mean, British-American Tobacco Company Limited  
5 is -- does do the research in relation to smoking and  
6 health. I think B.A.T. Industries, to respond to  
7 your question, gets information from British-American  
8 Tobacco Company Limited and is -- is satisfied that  
9 British-American Tobacco Company Limited is being  
10 responsible in these matters.

11 Q. All right. And does B.A.T. Industries also  
12 assure itself that Brown & Williamson is being  
13 responsible when it comes to these issues?

14 MR. SHEFFLER: Objection to the form.

15 A. The research related to smoking and health --  
16 are you okay?

17 Q. Yeah.

18 A. Research in relation to smoking and health is --  
19 is the responsibility of the tobacco companies, and,  
20 you know, in terms of Brown & Williamson, I'm  
21 obviously here responding for British-American  
22 Tobacco Company Limited, but in terms of the  
23 fundamental effort in relation to -- to -- to smoking  
24 and health, I mean, I think I can speak for us being  
25 responsible and I believe we have.

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1 Q. All right. But you're also here as a  
2 spokesperson for B.A.T. Industries, and so I'm going  
3 to re-ask my question again.

4 MR. SHEFFLER: Object to the statements of  
5 counsel.

6 Q. Does B.A.T. Industries also assure itself that  
7 Brown & Williamson is being responsible when it comes  
8 to issues relating to smoking and health?

9 A. And again, I mean, I'll try and respond to that  
10 on -- for B.A.T. Industries' point of view, that  
11 they -- they take a look and get information in  
12 relation to the -- the actions of the various  
13 operating companies, and I believe they -- they are  
14 of the understanding that those companies have been  
15 taking appropriate actions.

16 MS. WIVELL: Could you get out Exhibit 492,  
17 Mr. LaBorde.

18 MR. SHEFFLER: Off the record.

19 (Discussion off the stenographic record.)

20 (Plaintiffs' Exhibit 492 was handed  
21 to the witness.)

22 BY MS. WIVELL:

23 Q. Sir, showing you what's been marked previously  
24 as Exhibit 492, could you turn to the page that is  
25 Bates numbered 800. There the second complete

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1 paragraph begins "As a responsible company BAT wishes  
2 to fully understand its product. Fundamental work  
3 within Biological Research, often in collaboration  
4 with other areas, increases our understanding of what  
5 factors influence the biological activity of smoke.  
6 This ensures that the Company is seen to be ethical  
7 in its approach and in a strong position when testing  
8 new products."

9 Have I read that correctly so far?

10 A. Yes, you've read that correctly.

11 Q. Do you understand that that paragraph states the  
12 position of BATCO when it comes today to the reason  
13 it is doing research?

14 MR. SHEFFLER: Objection to the form.

15 A. Well the reason that, I mean, British-American  
16 Tobacco Company Limited today does research is to  
17 understand the product and to advance scientific  
18 knowledge in relation to smoking and health, and  
19 that's research that's done internally in the company  
20 and also externally from the company and -- and  
21 really overviewing what scientific advances are made  
22 in the general academic environment.

23 Q. So you would agree with that portion of what's  
24 been marked as Exhibit 492 that we just read; right?

25 MR. SHEFFLER: Object to the form.

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1 A. I mean, my answer was that -- I mean, and your  
2 question was related to what British-American Tobacco  
3 does. It -- it -- it undertakes research to  
4 understand issues related to smoking and health, and  
5 that's research that is included in-house research as  
6 well as external research as well as looking at -- at  
7 what, for example, various National Instit -- Cancer  
8 Institutes may be undertaking in terms of their  
9 research.

10 Q. But you would agree that B.A.T. recognizes that  
11 it has a responsibility to have scientific and  
12 technical knowledge about its cigarettes; right?

13 MR. FRANKEL: Object to form.

14 A. I mean, in terms of British-American Tobacco  
15 Company Limited, clearly the fact is that we've had a  
16 research establishment for many years that's been  
17 undertaking research and that we've had people that  
18 have been looking at the external literature in  
19 relation to smoking and health and have, for example,  
20 been contributing to joint programs; for example, in  
21 the United Kingdom with -- with the government  
22 looking at these types of matters.

23 Q. So you would agree that B.A.T. does recognize it  
24 has a responsibility to have scientific knowledge  
25 about its cigarettes; right?

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1 MR. SHEFFLER: Objection, asked and  
2 answered.

3 A. I mean, again I think the response is as -- as  
4 previously and that the fact is that British-American  
5 Tobacco has undertaken a significant amount of  
6 research both internally and externally in relation  
7 to smoking and health, smoking -- smoke chemistry, a  
8 whole variety of areas of research that might be  
9 related to smoking and health.

10 Q. Well my question -- I'm going to move to strike  
11 as nonresponsive. My question's a bit different,  
12 sir.

13 Does BATCO recognize that it has a  
14 responsibility to develop scientific knowledge about  
15 its cigarettes?

16 MR. SHEFFLER: Objection. This was  
17 repeatedly asked and answered.

18 A. And -- and my answer is that, I mean,  
19 British-American Tobacco has undertaken a significant  
20 amount of research in-house and -- and -- and  
21 externally, and I mean, if -- that I think responds  
22 to the question, and the fact is that we have clearly  
23 been undertaking this type of research and evaluating  
24 what research has been undertaken in the external  
25 environment.

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1 Q. Well move to strike as nonresponsive. Sir, my  
2 question's a little bit different.

3 Did you undertake this research because you  
4 recognized you had a responsibility to develop  
5 scientific knowledge about the cigarettes you were  
6 selling?

7 MR. SHEFFLER: Objection to the form,  
8 objection to asked and answered repeatedly.

9 A. I mean, the fact that we've undertaken research  
10 internally and -- and funded research externally  
11 would lead me to the opinion that -- that clearly  
12 this is something that we felt we needed to do, yes.

13 Q. Now, sir, you would agree that it is also  
14 vitally important that none of the B.A.T. Group  
15 companies mislead the consumer; --

16 MR. SHEFFLER: Object to form.

17 Q. -- isn't that true?

18 A. I think, you know, as a responsible company,  
19 there -- there should be no intention to mislead a  
20 consumer in any way, and I believe that, as far as I  
21 can see from the behavior of British-American Tobacco  
22 Company, that has not been done.

23 Q. Well move to strike the nonresponsive portion of  
24 the answer.

25 Sir, my question is simply this: Do you agree,

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1 "yes" or "no," that it is imperative that BATCO not  
2 mislead consumers?

3 MR. SHEFFLER: Objection. That question  
4 was asked and answered.

5 A. And my answer is that I think as a responsible  
6 company, there should be no intention to -- to  
7 misspeak or mislead in any shape or form, and I  
8 believe that is exactly what's happened.

9 Q. All right. And if you take a look at  
10 Exhibit 586, that is one of the first statements on  
11 the first page of that exhibit, isn't it, sir?

12 A. Can I just look back at that one?

13 Q. Yes. Look at the last sentence on the first  
14 page. Do you see that sentiment listed there, sir?

15 A. Yeah. What it -- what it says is "In general we  
16 should maintain our companies in the public mind as  
17 socially useful and responsible - as suppliers, as  
18 buyers, as employers, et cetera. Above all we"  
19 should "not mislead our consumers, who must believe  
20 that as manufacturers we are acting responsibly."

21 Q. All right. And you -- you would agree with that  
22 paragraph you just read, wouldn't you, sir?

23 A. I would certainly agree with the sentiment that  
24 British-American Tobacco should and -- and I believe  
25 is responsible.

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1 Q. All right. Well would you agree that B.A.T.

2 Industries also has a responsibility not to mislead

3 people who smoke cigarettes manufactured by any of

4 their subsidiary companies?

5 A. I believe, and as I -- I tried to state before,

6 is that, I mean, British-American Tobacco Company

7 Limited has a responsibility for those matters you're

8 talking about, and B.A.T. Industries will as a matter

9 of information take a look at what's going on. And I

10 believe I'm speaking for B.A.T. Industries that they

11 are comfortable that the actions of the tobacco

12 companies has been responsible.

13 Q. All right. Move to strike as nonresponsive.

14 My question, sir, is this: Does B.A.T.

15 Industries agree it also has a responsibility not to

16 mislead people who smoke the cigarettes manufactured

17 by any of their subsidiary companies?

18 MR. SHEFFLER: Objection. That question

19 was asked and answered.

20 A. B.A.T. Industries would rely upon

21 British-American Tobacco Company in terms of making

22 statements related to consumers. B.A.T. Industries

23 doesn't have consumers in relation to -- to smokers;

24 British-American Tobacco Company has. I think

25 British-American -- B.A.T. Industries is informed of

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1 the actions of British-American Tobacco Company  
2 Limited and is happy with those actions as being  
3 responsible.

4 Q. Well, sir, B.A.T. Industries from time to time  
5 makes public statements concerning smoking and  
6 health, doesn't it?

7 A. It may do so, but it would do so on the basis of  
8 information coming from British-American Tobacco  
9 Company Limited.

10 Q. And when it does so, B.A.T. Industries has a  
11 responsibility to make sure it's not misleading  
12 cigarette smokers in what it says about the products  
13 that are sold by its subsidiary companies?

14 A. I believe that B.A.T. Industries would wish  
15 to -- to speak as accurately as possible in that  
16 regard. That's why they would, for example, these  
17 days come to me to -- to provide them with  
18 information relating to smoking and health, but it's  
19 not simply on smoking and health. I think B.A.T.  
20 Industries as a responsible company would wish to  
21 speak accurately on all matters.

22 Q. All right. And you agree that they have a  
23 responsibility to speak the truth when it comes to  
24 information about smoking-and-health issues;  
25 correct?

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1 MR. SHEFFLER: Objection, asked and  
2 answered repeatedly.

3 A. I mean, I think any company has a responsibility  
4 of speaking the truth, and -- and that doesn't matter  
5 whether it's matters of smoking and health or matters  
6 of -- of any other. In relation to people's  
7 business, people should speak the truth.

8 Q. And you would agree that B.A.T. Industries has  
9 an obligation not to make untrue statements to  
10 smokers about the cigarettes that are sold by their  
11 subsidiary companies; right?

12 MR. SHEFFLER: Objection, asked and  
13 answered repeatedly.

14 A. I mean, again, I mean, I think -- I'm not sure  
15 whether this is a different question, but B.A.T.  
16 Industries should speak the truth and I believe it  
17 does speak the truth as -- as -- as on matters  
18 related to smoking and health. That would be  
19 something that, for example, these days I would  
20 provide them the information on.

21 Q. All right. Well, it would be inappropriate for  
22 B.A.T. Industries to make untrue statements, wouldn't  
23 it?

24 MR. SHEFFLER: Objection, asked and  
25 answered repeatedly.

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1 A. It's appropriate -- inappropriate for any  
2 company to -- to make untrue statements, and I think  
3 that applies absolutely to B.A.T. Industries also.

4 Q. Okay. And it also applies to BATCO, doesn't  
5 it?

6 MR. SHEFFLER: Asked and answered.

7 A. And again as -- as it applies to every -- every  
8 business, yes, it does.

9 Q. All right. And you would agree that B.A.T.  
10 Industries should not be deceptive about what it says  
11 to the public about smoking-and-health issues;  
12 correct?

13 MR. SHEFFLER: Objection, asked and  
14 answered.

15 MR. FRANKEL: Objection.

16 A. Again I think every company, including B.A.T.  
17 Industries, should not be misleading.

18 Q. All right. And that would also apply to BATCO,  
19 wouldn't it, sir?

20 MR. SHEFFLER: Asked and answered.

21 A. And again -- sorry.

22 And again, yes, every company, including  
23 British-American Tobacco Company Limited.

24 Q. All right. And you would agree that it would be  
25 improper for anyone speaking on behalf of either

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1 B.A.T. Industries or BATCO to make statements to the  
2 public that were misleading about cigarettes that  
3 were manufactured by any of their group companies?

4 MR. SHEFFLER: Objection to the form.

5 A. That's a complicated question. Could you ask it  
6 to me again.

7 Q. All right. Let me break it out again.

8 Would you agree that it would be improper for  
9 anyone speaking on behalf of B.A.T. Industries to  
10 make statements to the public that were misleading  
11 about cigarettes that were manufactured by any of its  
12 group companies?

13 MR. SHEFFLER: Objection to the form.

14 A. And I think, I mean, as I've stated before, in  
15 terms of giving accurate and appropriate information  
16 to the public, it is absolutely correct that that  
17 should represent the understanding of the company.

18 Q. All right. And you would agree that it would be  
19 improper for anyone speaking on behalf of BATCO to  
20 make statements to the public that were misleading  
21 about cigarettes that were manufactured by it or one  
22 of its group companies?

23 MR. SHEFFLER: Objection to the form.

24 A. I mean, again, I mean, I think it's -- it's the  
25 same answer, that any public statement should --

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1 should be made on the basis of -- of the company  
2 knowledge and should not rep -- misrepresent that  
3 company's knowledge.

4 Q. Now do you agree that B.A.T. Industries has a  
5 responsibility to inform smokers about the -- the  
6 hazards which it might be aware of that are  
7 associated with cigarettes sold by its subsidiary  
8 companies?

9 MR. SHEFFLER: Asked and answered.

10 MR. FRANKEL: Object to form as well.

11 A. I think British-American Tobacco Company clearly  
12 takes a look at the scientific literature relating to  
13 smoking and health and will -- will -- will make any  
14 public statements responsive to that. I think B.A.T.  
15 Industries relies upon British-American Tobacco  
16 Company Limited for its information and, if it is to  
17 speak on these matters, should speak accurately.  
18 It's a responsibility of -- of people like myself of  
19 British-American Tobacco Company to ensure that the  
20 information is as accurate as -- as possible.

21 Q. Well, sir, do -- I'm sorry, strike that.

22 Does B.A.T. Industries accept an interest in the  
23 health of the people who smoke cigarettes  
24 manufactured by its subsidiaries?

25 MR. SHEFFLER: Objection to the form.

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1 A. I'm sorry, could you ask it again.

2 Q. Certainly. Does B.A.T. Industries accept an  
3 interest in the health of the people who smoke  
4 cigarettes manufactured by its subsidiaries?

5 MR. SHEFFLER: Same objection.

6 A. I mean, British-American Tobacco looks at the  
7 smoking-and-health issue. B.A.T. Industries would  
8 certainly be informed about developments in relation  
9 to smoking and health as it may relate to -- I mean,  
10 clearly to smokers.

11 Q. Move to strike as nonresponsive. My question's  
12 different, sir.

13 My question is: Does B.A.T. Industries  
14 recognize that it is -- has a responsibility for the  
15 health of the smokers who smoke cigarettes  
16 manufactured and sold by its subsidiary companies?

17 MR. SHEFFLER: Objection to counsel's  
18 statement. Objection, asked and answered. Objection  
19 to the form.

20 A. I think B.A.T. Industries would wish to ensure  
21 that it -- or not ensure, but be informed that its  
22 British-American Tobacco, its tobacco operation, was  
23 being responsible in relation to smoking and health.  
24 I mean, the fact is that, I mean, information for  
25 smokers, whether they decide to -- to choose to smoke

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1 or not, comes effectively from the public health  
2 authorities. I think if British-American Tobacco  
3 were to misrepresent its views to the science --  
4 related to the science, that would not be a good  
5 thing, and I believe B.A.T. Industries is comfortable  
6 that the actions of British-American Tobacco have  
7 been responsible in that matter.

8 And the fact is that in terms of smokers and  
9 their decision or a person, an adult, and their  
10 decision whether to smoke or not really is shaped by  
11 the public environment.

12 Q. Well, sir, from time -- from time to time B.A.T.  
13 Industries makes statements in that public  
14 environment, doesn't it?

15 A. Yes, it does, on all sorts of matters.

16 Q. And it makes statements in the public  
17 environment about smoking and health, doesn't it?

18 A. I believe it has on occasion.

19 Q. And in fact, you're aware that Mr. Broughton  
20 made a statement concerning smoking-and-health issues  
21 just last year that was reported in the Wall Street  
22 Journal; correct?

23 A. I'm -- I know that some statements have been  
24 reported in a variety of press, and I'm not sure  
25 exactly what article you're referring to.

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1 MS. WIVELL: Mr. LaBorde, could you get out  
2 Exhibit 500, please.

3 MR. FRANKEL: Ms. Wivell, just for  
4 clarification, for the -- for the record, it's -- I  
5 believe it's B-A-T Industries as opposed to B.A.T.  
6 Industries.

7 (Plaintiffs' Exhibit 500 was handed  
8 to the witness.)

9 BY MS. WIVELL:

10 Q. Sir, showing you what's previously been marked  
11 as Exhibit 500, this is a -- an article entitled  
12 "B.A.T Industries Pretax Profit Rose 5 percent; Sale  
13 of Tobacco Business Under Review"; correct?

14 A. Yes, that's what it says at the top of this  
15 article.

16 Q. All right. And for the record, I will state  
17 that this was a -- an article that was clipped out of  
18 the Wall Street Journal from my office on 10/31/96.

19 Sir, if you look at the second column in the exhibit,  
20 you see a statement by Martin Broughton, don't you?

21 A. There's various statements in the second  
22 column.

23 Q. All right. Do you see the paragraph that begins  
24 "Although B.A.T's Brown & Williamson" --

25 A. Uh-huh.

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1 Q. -- "unit in the U.S. has been accused of  
2 concealing research that showed a link between  
3 smoking cigarettes and disease, Mr. Broughton said  
4 the charges are unfounded"?

5 A. Yes, I see that.

6 Q. He said, quote, "'We haven't concealed, we do  
7 not conceal and we will never conceal'"; correct?

8 A. Yes, he said that.

9 Q. He goes on to say, "'We have no internal  
10 research which proves that smoking causes lung cancer  
11 or other diseases or, indeed, that smoking is  
12 addictive'"; correct?

13 A. Yes, he does.

14 Q. Now, sir, were you consulted when Mr. Broughton  
15 made this public statement?

16 A. Yes, I was.

17 Q. You were not consulted by him, though, were  
18 you?

19 A. No, I wasn't.

20 Q. You were consulted by the solicitor?

21 A. Actually, no, I wasn't. I was consulted by  
22 the -- the gentleman who was in charge of consumer  
23 and regulatory affairs at the time, a chap called  
24 Andrew Napier.

25 Q. And, sir, you understand that B.A.T. Industries'

1 chairman of the board had an obligation to speak  
2 correctly when he made this statement?

3 A. I believe Mr. Broughton's the chief executive  
4 officer, not the chairman, but yes, I mean, I think  
5 he's -- I mean, as I've -- I said previously, anyone  
6 speaking publicly has a responsibility to speak  
7 accurately.

8 Q. All right. And because it would be a breach of  
9 B.A.T. Industries' duty to misrepresent the knowledge  
10 that it had concerning these subjects, wouldn't it?

11 MR. SHEFFLER: Objection.

12 MR. FRANKEL: Objection.

13 MR. SHEFFLER: Objection to the form, calls  
14 for a legal conclusion.

15 A. I mean, I don't know what "duty" means, but  
16 certainly I think as a responsible company we should  
17 speak accurately.

18 Q. All right. Well let's use the word  
19 "obligation." It would be a breach of B.A.T.  
20 Industries' obligation, wouldn't it, to make  
21 misstatements about smoking-and-health issues like  
22 this to the public press, wouldn't it?

23 MR. SHEFFLER: Objection to the form.

24 MR. FRANKEL: And asked and answered.

25 A. I mean, again I believe that British-American

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1 Tobacco and B.A.T. Industries should speak  
2 accurately. I think that's what's -- what's been  
3 done in this case.

4 Q. Well, sir, it would be a breach of -- no, strike  
5 that.

6 When B.A.T. Industries makes public statements  
7 like this one in Exhibit 500, you expect people to  
8 read them; right?

9 A. I mean, it's -- a statement like this presumably  
10 will be read by some people who read this newspaper.

11 Q. And when B.A.T. Industries makes public  
12 statements on smoking and health like that made in  
13 Exhibit 500, it expects people to rely on the  
14 statements made in -- in the -- made therein; right?

15 MR. SHEFFLER: Objection to the form,  
16 overbroad.

17 A. I mean, I think, I mean, a statement like this  
18 read by someone who picked up the Wall Street Journal  
19 that day would be read in -- in conjunction with the  
20 whole environment related to -- to smoking and  
21 health. I'm sure anyone who picked up the Wall  
22 Street Journal on -- what was this? -- the 31st day  
23 of the 10th month of '96 would have also read in --  
24 in the Wall Street Journal that month a whole series  
25 of other things related to smoking and health,

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1 probably with quite different views.

2 I think for B.A.T. Industries' statement, it  
3 should be accurate, but in terms of a person in the  
4 street, whether they rely upon that as to form their  
5 view, they would presumably take that as the view  
6 of -- of Mr. Broughton. Whether they use that to  
7 form their view of the general situation, well it  
8 would be one part of the equation.

9 Q. All right. But you expect that people will  
10 believe what you say when you speak publicly, and by  
11 "you" I mean B.A.T. Industries; right?

12 MR. SHEFFLER: Objection to the form and  
13 asked and answered.

14 A. I think people reading this statement will view  
15 that as the view of British-American Tobacco or  
16 B.A.T. Industries, yes.

17 Q. All right. And you expect people to believe  
18 you, don't they -- don't you?

19 MR. SHEFFLER: Object to the form,  
20 overbroad.

21 A. Well I mean, I hope people will think that we  
22 are telling the truth to the best of our ability.  
23 Again in terms of someone's forming an opinion on  
24 these matters, this would be one part of a very large  
25 body of information that any individual person will

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1 be -- would take in to try and form a view, if they  
2 wished to, on this matter.

3 Q. All right. And when B.A.T. Industries makes  
4 public statements on smoking and health, it hopes  
5 that people believe what it says, doesn't it?

6 MR. SHEFFLER: Objection, overbroad, asked  
7 and answered.

8 A. I'm not sure whether we -- we hope that people  
9 would -- would believe us or not. I mean, we would  
10 give a statement which is true to the best of our  
11 knowledge, and -- and obviously it's up to an  
12 individual person to take that as the -- whichever  
13 way they wish to take it. As long as we speak  
14 accurately, I think that's -- that's as far as we can  
15 go.

16 And I don't think, I mean, there's any  
17 suggestion, for example, with this article that --  
18 that we went out to seek this, and my guess would be  
19 that this is an interview that was -- was given on  
20 the request of the media.

21 Q. Well, sir, when B.A.T. Industries gives  
22 interviews in response to requests from the media and  
23 makes public statements, it expects that people  
24 will -- no, strike that.

25 When B.A.T. Industries gives interviews in

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1 response to requests from the media and makes public  
2 statements, it hopes that people believe what is  
3 said; right?

4 MR. SHEFFLER: Objection. This has been  
5 asked and answered repeatedly. Also objection to the  
6 form as overbroad.

7 A. I mean, I think we would -- we would hope that  
8 people may understand that is our view of the  
9 situation. Again, I mean, that will be one very  
10 small part of a general set of information that any  
11 one individual may take to form a view if they wish  
12 to form a view.

13 Q. And it would be reasonable for people to believe  
14 what B.A.T. Industries says when it speaks publicly;  
15 right?

16 MR. SHEFFLER: Objection to the form of the  
17 question.

18 A. I think -- I mean, and I can speak for myself in  
19 terms of reading any newspaper article. If there's a  
20 statement made by -- by any chief executive of a  
21 company, I would assume that the views that that  
22 person is making are accurate views in -- in his or  
23 her opinion. Whether I form a view as to that is  
24 something I will take within myself as being the key  
25 resident knowledge on that issue, well maybe, maybe

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1 not; it depends on the situation.

2 Q. Well let me ask it this way: When BATCO makes  
3 public statements about smoking and health, does it  
4 expect that people will believe what it says?

5 MR. SHEFFLER: Objection to the form,  
6 overbroad.

7 A. When, for example, I would make a -- a statement  
8 to someone from a newspaper on an inquiry, all I hope  
9 is -- is that that statement's reflected as an  
10 accurate impression of what I say. In terms of what  
11 a person picking up the newspaper and -- that carries  
12 that article, their understanding, I would certainly  
13 hope that they would understand that what I have said  
14 is -- is accurate to my knowledge, but it would be  
15 only one very small part perhaps of -- of a general  
16 information that anyone would take on these matters.

17 Q. Well when you make these statements, don't you  
18 hope that people believe what you say?

19 MR. SHEFFLER: Objection to the form, asked  
20 and answered.

21 A. When I speak to the media, for example, I would  
22 speak accurately and I would hope that people would  
23 understand that what I say is accurate. Again in  
24 terms of how they form a view on that matter, that  
25 will be one part of a -- a very broad equation.

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1 Q. Well, sir, your job, if I understand it  
2 correctly, is to speak on behalf of BATCO. That's  
3 part of your regular job; right?

4 MR. SHEFFLER: Objection.

5 A. One part of the role that I take is -- is to  
6 ensure that when British-American Tobacco Company  
7 Limited speaks on -- on matters related to smoking  
8 and health, they speak as accurately as possible --

9 Q. And --

10 A. -- and --

11 Q. -- you -- I'm sorry.

12 A. -- and don't misrepresent the science and  
13 particularly when you're trying to translate  
14 something which is very complex into lay language.  
15 That's certainly one part of my role, and on  
16 occasions I have spoken to the media.

17 Q. Well, sir, and isn't it also your job to try and  
18 form statements that will reassure smokers?

19 MR. SHEFFLER: Objection to the form,  
20 overbroad.

21 A. I mean, the fact is that the type of statements  
22 we will make on smoking and health reflect the  
23 scientific matters. The fundamentals of -- of a lot  
24 of our statements are our respect for public health  
25 authorities, and I can't think of -- of any instance

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1 where British-American Tobacco has made public  
2 statements that would have had a major influence in  
3 and above what the public health authorities said in  
4 relation to smoking and health. When we do speak on  
5 these matters, it is clearly critical that we speak  
6 with as much accuracy as possible in relation to the  
7 underlying science.

8 Q. Move to strike as nonresponsive.

9 Sir, isn't part of your job description to  
10 reassure smokers --

11 MR. SHEFFLER: Objection.

12 Q. -- that smoke BATCO or B.A.T. Group products?

13 MR. SHEFFLER: Apologize. Objection to the  
14 form.

15 A. No.

16 Q. It's not part of your job at all; is that your  
17 testimony?

18 A. My testimony is that -- that I have -- I have no  
19 part of my role within British-American Tobacco with  
20 a specific intention to reassure smokers. I think  
21 people who choose to smoke do so in -- in light of --  
22 of the broad information that's available to them,  
23 and that overwhelmingly is information related to the  
24 public health authorities. And there is nothing that  
25 I do as part of my job that is specifically trying to

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1 discourage smokers from taking their view from what's  
2 generally available in the public environment.

3 Q. All right. Sir, let's change the subject a  
4 little bit.

5 When it comes to the delegated authority that  
6 BATCO has from B.A.T. Industries, you would agree  
7 that policy matters are matters that are retained for  
8 B.A.T. Industries to decide; right?

9 MR. SHEFFLER: Object to the form.

10 MR. FRANKEL: Objection.

11 A. I'm not sure what you mean by "policy matters."  
12 If --

13 Q. All right. Well you understand that B.A.T.  
14 Industries has delegated some authority on various  
15 issues to some of its operational companies; right?

16 A. I mean, I think that B.A.T. Industries expects  
17 companies like British-American Tobacco to -- to  
18 operate in a fashion and they will be informed of the  
19 way those -- those companies operate.

20 Q. Well, sir, isn't it true that B.A.T. Industries  
21 retains for itself the decisions on policy matters?

22 MR. SHEFFLER: Object to the form.

23 A. Again it depends what you mean by "policy  
24 matters." If you're referring, for example, to  
25 actions in relation to smoking and health, those --

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1 those would be things that would be dealt with at  
2 British-American Tobacco.

3 Q. Well, sir, isn't it a fact that the  
4 determination of policy concerning business  
5 parameters for the operating companies is retained by  
6 B.A.T. Industries?

7 MR. SHEFFLER: Objection to the form.

8 A. Again I -- I think I need an example of what  
9 kind of policy, which I guess you're going to provide  
10 me.

11 MS. WIVELL: Mr. LaBorde, could you get out  
12 Exhibit 2301. Well wait a second. I have one that  
13 has -- I have a copy that is marked, so I don't think  
14 we need to do that.

15 THE WITNESS: Thanks.

16 MS. WIVELL: Oops.

17 MR. SHEFFLER: I'll take that one.

18 BY MS. WIVELL:

19 Q. Sir, showing you what was previously marked as  
20 Defendants' Exhibit 2301, this is the delegated  
21 authority from B.A.T. Industries; correct?

22 A. Well it says at the top of this document  
23 "DELEGATED AUTHORITY."

24 Q. All right. And --

25 MR. SHEFFLER: What -- excuse me. Counsel,

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1 my copy has -- has -- the very top of the document is  
2 cut off. Is that -- is that -- okay, all right.

3 Q. And this is signed by David Wilson and dated  
4 July 26, 1994; correct?

5 A. Yeah, it is.

6 Q. Now it says under here -- on the first page  
7 under "SUBJECT" it says "POLICY"; right?

8 MR. SHEFFLER: There's two "SUBJECT."

9 A. It says "1. POLICY" and "2. FINANCE."

10 Q. All right. Look under the policy section. Do  
11 you see "Determination of business parameters for  
12 each Operating Group," point (c)?

13 A. Yes, it says "Determination of business  
14 parameters for each Operating Group."

15 Q. And the reference to that is the main board;  
16 right?

17 A. It says "ULTIMATE REFERENCE."

18 Q. That means that the ultimate responsibility  
19 rests with B.A.T. Industries' board; right?

20 MR. SHEFFLER: Objection to the form.

21 A. I don't know. I mean, at the top of this  
22 document it talks about "The B.A.T Industries Group  
23 has evolved an organization which encourages the  
24 exercise of a high degree of autonomy within the  
25 framework approved by the Board" and "Thus, the

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1 freedom and responsibilities in operations reside in  
2 Operating Groups ...."

3 Q. And then it goes on to talk about things which  
4 are reserved to the board; correct?

5 A. No. It goes on to say "except in respect of  
6 matters which affect B.A.T Industries' interest as a  
7 shareholder in Operating Groups, which should be  
8 referred to the Chief Executive's Committee ...  
9 and/or the Main Board."

10 Q. And the main board it refers to is B.A.T.  
11 Industries'; correct?

12 A. I would assume that is the case.

13 Q. And if we look down under "POLICY," under point  
14 (c), "Determination of business parameters for each  
15 Operating Group, i.e. Guidelines to Operating  
16 Groups," is the responsibility of the main board;  
17 correct?

18 A. No, it says the ultimate reference, and I'm not  
19 sure precisely what ultimate reference is. I would  
20 assume given what it says at the top of this document  
21 it would be that the main board in this case would be  
22 looking broadly at the kind of actions that are  
23 happening at the operating group level. But the --  
24 the framework is that the company expects a high  
25 degree of autonomy within its operating group.

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1 Q. But under "POLICY," sir, the "Determination of  
2 business parameters for each Operating Group, i.e.  
3 Guidelines to Operating Groups," the ultimate  
4 reference is to the main board; correct?

5 A. That's what it says in this document.

6 Q. All right.

7 A. I'm not sure what that absolutely means.

8 Q. All right. Sir, you understand that for the  
9 last approximately 40 years the policy concerning  
10 smoking and health has been dictated by -- no, strike  
11 that.

12 You understand that today the policy concerning  
13 smoking and health, what is said publicly by the  
14 B.A.T. Group companies is the ultimate responsibility  
15 of the B.A.T. Industries board; correct?

16 MR. SHEFFLER: Objection to the form.  
17 Objection, asked and answered.

18 A. No, I -- that's not my understanding. I mean, I  
19 think what you'll find is that -- that in terms of  
20 ensuring the company is speaking accurately, what  
21 happens is that -- that that takes part of  
22 British-American Tobacco Company Limited and in fact  
23 today a lot of that takes part in -- in the body of  
24 myself. And if B.A.T. Industries are speaking on  
25 such matters, they would actually rely upon myself

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1 and from British-American Tobacco Company Limited to  
2 ensure accuracy in terms of the science.

3 Q. Sir, I'm going to show you what's previously  
4 been marked as Exhibit 317. This is a document Bates  
5 numbered 620789910; correct?

6 A. It's 620789910, yes.

7 Q. This is on B.A.T. Industries stationery; right?

8 A. What it says at the top is "B.A.T INDUSTRIES,"  
9 yes.

10 Q. And it says "TO ALL OPERATING GROUP  
11 CHAIRMAN/LIAISON DIRECTORS, LEGAL CONSIDERATIONS IN  
12 SMOKING & HEALTH ISSUES"; right?

13 A. That's correct.

14 MR. SHEFFLER: Just for the record, this  
15 document was not predesignated. Has this been used  
16 in a --

17 MS. WIVELL: This document was  
18 predesignated, sir.

19 MR. SHEFFLER: In this deposition?

20 MS. WIVELL: It's previously been marked as  
21 an exhibit in a B.A.T./BATCO/B&W deposition.

22 MR. SHEFFLER: So it doesn't appear in the  
23 predesignation list of the 500 or so documents you've  
24 designated for this deposition?

25 MS. WIVELL: It's under the first subject,

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1 sir, the first -- the very first item listed, I  
2 believe.

3 MR. SHEFFLER: Oh, all deposition exhibits  
4 from previous depositions? Is that -- is that how  
5 this comes about, because it -- I don't have anything  
6 on mine?

7 MS. WIVELL: Well can you read that there?  
8 Doesn't that say --

9 MR. SHEFFLER: It doesn't say here that  
10 this is from a previous deposition.

11 MS. WIVELL: All right. Mr. LaBorde, would  
12 you get out Exhibit 317.

13 MR. SHEFFLER: If you'll -- if you'll state  
14 that for the record, I'll accept it.

15 MS. WIVELL: I did already state that for  
16 the record.

17 MR. SHEFFLER: Well I didn't hear it. If  
18 it's 317 from a previous deposition, fine.

19 BY MS. WIVELL:

20 Q. Sir, this document says "Recent changes in the  
21 law in some states in the U.S.A. have resulted in a  
22 fresh spate of litigation against the tobacco  
23 industry" here. "For this reason it is most  
24 important that other members of the Group are  
25 constantly aware of B.A.T Industries' stance on

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1 Smoking & Health"; correct?

2 A. That's what --

3 MR. SHEFFLER: It actually says "there,"

4 not "here" in the first sentence, but --

5 A. With that noted, yes, that's what it says here.

6 Q. And then it says "I should be grateful if you

7 would ensure the widest possible circulation in your

8 Operating Group of the Group policy on Smoking &

9 Health Issues as summarized in the attached note";

10 correct?

11 A. That's what it says.

12 Q. All right. And attached to that is the B.A.T.

13 stance -- B. -- I'm sorry, strike that.

14 Attached to that is B.A.T. Industries' stance on

15 smoking and health; correct?

16 A. No, what's attached here is titled "LEGAL

17 CONSIDERATIONS ON SMOKING & HEALTH POLICY" dated

18 March 1984.

19 Q. And what is attached there is what is referred

20 to as the B.A.T. Industries' stance on smoking and

21 health in the first paragraph of Exhibit 317; right?

22 MR. SHEFFLER: Objection to the form.

23 A. If I can just read it a second.

24 I mean, what -- sorry, should I answer a

25 specific question?

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1 Q. Let me ask the question again.

2 A. Yeah, thanks.

3 Q. And what is attached there is what is referred  
4 to as the B.A.T. Industries' stance on smoking and  
5 health in the first paragraph of Exhibit 317?

6 A. Well this -- this set of four paragraphs starts  
7 by saying it's a note that summarizes the policy of  
8 B.A.T. Industries Group in relation to  
9 smoking-and-health issues and goes on to say that the  
10 group's position, which I think probably refers to  
11 the tobacco elements of the group, and also states  
12 in -- in paragraph two that it's essential that  
13 statements about cigarette smoking or the  
14 smoking-and-health issue generally must be factually  
15 and scientifically correct.

16 I think my understanding of -- of what this  
17 document is is that it's referring to the -- the  
18 various -- I don't know whether it's policies or  
19 positions, but certainly the overriding theme of what  
20 the British-American Tobacco Group of tobacco  
21 companies sees as reasonable in relation to smoking  
22 and health, and that certainly includes that it's  
23 essential that statements about cigarette smoking or  
24 smoking and health must be factual or/and  
25 scientifically correct.

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1 Q. All right, sir. I move to strike as  
2 nonresponsive. My question -- and this will go a  
3 whole lot faster if you just listen to it. Isn't it  
4 a fact --

5 MR. SHEFFLER: Object to counsel's  
6 statements.

7 Q. Isn't it a fact, sir, that what is attached is  
8 what is referred to as the B.A.T. Industries' stance  
9 on smoking and health in the first paragraph of  
10 Exhibit 317?

11 MR. SHEFFLER: Objection, asked and  
12 answered.

13 A. I'm sorry, I don't see the word "stance." Maybe  
14 I'm just missing it.

15 Q. Sir, could you turn back to the first page of  
16 Exhibit 317.

17 A. Oh, I'm sorry. I was looking at the second  
18 page.

19 Q. And then it says "For this reason it is ...  
20 important that other members of the Group are  
21 constantly aware of B.A.T Industries' stance on  
22 Smoking & Health."

23 A. That's what it says on the first page.

24 Q. And then in order to assure that all of the  
25 companies were aware of B.A.T. Industries' stance on

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1 smoking and health, the second page of the document  
2 was circulated to the chief executive officer of each  
3 of the tobacco operating companies within B.A.T.  
4 Industries; correct?

5 MR. SHEFFLER: Objection to the form.

6 A. I mean, I don't know whether that is the case  
7 from -- from the page I've -- I've got here. I mean,  
8 if I assume that these were two pages that went  
9 together, it does say on the top of the first page  
10 "TO ALL OPERATING GROUP CHAIRMAN/LIAISON  
11 DIRECTORS."

12 Q. And then if we look at the second page, the  
13 first sentence says "This note summarises the policy  
14 of the BAT Industries Group in relation to smoking &  
15 health issues"; right?

16 MR. SHEFFLER: Asked and answered.

17 A. That's what it says, yes.

18 Q. All right. Now, sir, isn't it true that even  
19 before B.A.T. Industries became the holding company  
20 for the B.A.T. Group, that the stance on  
21 smoking-and-health issues for the operating companies  
22 within the B.A.T. Group was dictated by BATCO?

23 MR. SHEFFLER: Objection to the form,  
24 assumes facts not in evidence.

25 A. I mean, the stance is not dictated by anyone. I

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1 think the stance, as it says here, is dictated by  
2 what -- what the science says. You know, this  
3 document talks about ensuring and -- that statements  
4 made about cigarette smoking or smoking-and-health  
5 issues must be factual and scientifically correct.  
6 So I don't think there's any determination of -- of  
7 individuals on what the stance should be other than  
8 people reviewing the scientific matters and -- and  
9 trying to ensure that companies speak accurately and  
10 factually on those matters.

11 Q. Well, sir, doesn't the second paragraph -- I'm  
12 sorry.

13 Doesn't the second sentence of the first  
14 paragraph say "Although primarily the concern of the"  
15 tobacco group's "interests, it is important for  
16 senior executives in other parts of the Group to be  
17 aware of the stance taken"?

18 A. I mean, I think it says exactly that, and what I  
19 would read from that is that -- that clearly it is --  
20 is the tobacco companies of the British -- or the  
21 B.A.T. Group who have the primary -- I don't know  
22 whether it's responsibility, but certainly the -- the  
23 people that -- that should be speaking accurately in  
24 relation to smoking and health, but that other  
25 companies within B.A.T. Industries should be aware

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1 of -- of what the tobacco side of the business is  
2 saying. I think that sounds reasonable.

3 Q. Well and one of the reasons they wanted to be  
4 aware of the tobacco -- what the tobacco side of the  
5 business was saying is so that they would avoid  
6 making any statements that might adversely affect the  
7 group's tobacco interests in litigation in the United  
8 States; isn't that true?

9 MR. SHEFFLER: Objection to the form,  
10 assumes facts not in evidence, overbroad.

11 A. I mean, that's speculation. I would imagine  
12 that, for example, within our financial services at  
13 the moment we wouldn't expect anyone to be speaking  
14 on smoking and health if they didn't have adequate  
15 information related to the science related to that.  
16 I think probably as a matter of general business  
17 there would be interests in other sides to the  
18 business on -- on what the science says on -- on  
19 smoking and health, but I -- as far as I can tell,  
20 there's -- there's no indication from this memo  
21 that -- that -- that one is trying to ensure that --  
22 that various parts of -- of the company are saying  
23 anything which is not factually accurate.

24 Q. Well, sir, doesn't the last paragraph state  
25 "Non-tobacco companies in the Group must

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1 particularly beware of any commercial activities or  
2 conduct which could be construed as discrimination  
3 against tobacco or tobacco manufacturers (whether or  
4 not involving companies within the Group), since this  
5 could adversely affect the position of Brown &  
6 Williamson in current US product liability litigation  
7 in the United States"?

8 A. That's what it says. I'm not sure what it means  
9 by "commercial activities or conduct." If it refers  
10 to any non-tobacco company within the group making a  
11 statement which isn't based, as it says in paragraph  
12 two, on -- on being factually and scientifically  
13 correct, then, I mean, I think that's probably a  
14 sensible statement.

15 Q. And then it even refers people to the B.A.T.  
16 Industries legal department, who have up-to-date  
17 information on the legal situation affecting the  
18 tobacco companies; right?

19 MR. SHEFFLER: Objection as argumentative,  
20 but you can answer.

21 A. I mean, it does say that "BAT Industries Legal  
22 Department ... have up-to-date information on the  
23 legal situation affecting ... tobacco companies."

24 Q. And it refers people to the B.A.T. Industries  
25 legal department, doesn't it?

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1 MR. SHEFFLER: Objection to the form.

2 A. I think what it says here in the last sentence  
3 is that "If in doubt, companies should not hesitate  
4 to consult their inhouse counsel ...."

5 Q. "Or BAT Industries Legal Department, who have  
6 up-to-date information on the legal situation  
7 affecting the tobacco companies"; right?

8 A. I mean, that's accurately read, but the -- the  
9 first part of that is for people to -- to speak to  
10 their in-house counsel, which I would assume would  
11 refer to any tobacco company speaking to their lawyer  
12 or lawyers responsible for -- for those types of  
13 matters within the tobacco company. It seems to me  
14 it also suggests that B.A.T. Industries' legal  
15 department would have an overview of the information,  
16 that that might be a useful source.

17 Q. Sir, you would agree that there has been a  
18 coordinated policy concerning public statements on  
19 smoking-and-health issues for the B.A.T. Group since  
20 the early '60s, hasn't there?

21 MR. SHEFFLER: Objection, overbroad.

22 A. I'm not sure whether there's a formalized  
23 policy. I think it's always been understood within  
24 the company that the people should speak accurately  
25 and -- as to issues related to smoking and health.

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1 MS. WIVELL: Mr. LaBorde, could you get out  
2 Exhibit 316, please.

3 (Plaintiffs' Exhibit 316 was handed  
4 to the witness.)

5 THE WITNESS: Thank you.

6 BY MS. WIVELL:

7 Q. Sir, showing you what's previously been marked  
8 as Exhibit 316, this is a document entitled "STRICTLY  
9 CONFIDENTIAL, TO ALL NUMBER 1s OF ASSOCIATED  
10 COMPANIES, SMOKING AND HEALTH"; right?

11 A. Yeah, the title is "STRICTLY CONFIDENTIAL, TO  
12 ALL NUMBER 1s OF ASSOCIATED COMPANIES," and then the  
13 title underneath that says "SMOKING AND HEALTH."

14 Q. And it says "We have recently reviewed the Group  
15 policy on Smoking and Health and the enclosed  
16 strictly confidential document ... supersedes the  
17 previous policy document circulated on 12th June  
18 1970"; correct?

19 A. That's what it says.

20 Q. And isn't it true that this document sets forth  
21 the guidelines for public statements that are to be  
22 made by B.A.T. Group companies?

23 MR. SHEFFLER: Object to the form.

24 A. I don't know. I have to read it. If I could  
25 just take a moment to take a look through it.

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1 Q. All right. Well I'd like to take a break  
2 anyway, so --

3 A. Okay.

4 MR. SHEFFLER: Well if we're going to take  
5 a break and have him read a document, we're going to  
6 take a break so he can get a break as well.

7 MS. WIVELL: That's fine.

8 MR. SHEFFLER: Okay.

9 THE REPORTER: Off the record, please.

10 (Recess taken.)

11 MR. SHEFFLER: Defendants would like to  
12 mark as Exhibit 2906 a letter from Martha K. Wivell  
13 to Byron E. Starns dated August 5, 1997 with attached  
14 Exhibit A, the predesignation list of documents for  
15 the 30.0 -- 30.02(f) deposition of B.A.T. Industries  
16 and BATCO, and as 2907 defendants would like to mark  
17 a fax to Byron Starns dated August 8th, 1997 sent at  
18 4:48 from Robins Kaplan, which is a supplemental  
19 designation list for this deposition.

20 (Defendants' Exhibits 2906 and 2907

21 were marked for identification.)

22 BY MS. WIVELL:

23 Q. All right. Sir, before we went off the record,  
24 I asked you with regard to Exhibit 316 if this  
25 document sets forth guidelines for public statements

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1 that were to be adhered to by B.A.T. Group  
2 companies.

3 A. I'm not sure it's -- it states guidance for  
4 public statements. I've had an opportunity to read  
5 the document. I think what it suggests is the  
6 document, a general thrust of behavior, particularly  
7 in terms of working with medical authorities and with  
8 governments in relation to smoking and health.

9 Q. Just so we're clear here, this document  
10 identifies the association of smoking with various  
11 diseases as a major threat to the tobacco industry,  
12 doesn't it?

13 A. The first sentence is "The association of  
14 smoking with various diseases continues to be a major  
15 threat to the tobacco industry."

16 Q. And, sir, isn't it true that even today the  
17 association of smoking with various diseases is a  
18 major threat to the tobacco industry?

19 A. I'm not sure what a major threat is. It's  
20 most -- most clear that science has identified  
21 association between smoking and various diseases,  
22 that those associations have been taken by public  
23 health authorities to -- to their view that smoking  
24 causes various diseases and -- and the public health  
25 authorities have given that view very clearly to the

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1 public.

2 Q. All right. And, sir, if we look at the page  
3 that has number three at the top, it says "View on  
4 Causation," doesn't it?

5 A. I see page three and there's a title on the left  
6 which says "View on Causation."

7 Q. All right. And it says in the -- that first  
8 paragraph at the top of the page "As these are among  
9 the people whom the industry most seeks to influence,  
10 it is thought ... we should have a reasonable answer  
11 on the question of causation"; correct?

12 A. That's what it says.

13 Q. All right. And it says "It is suggested our  
14 answer should be expressed in future on the following  
15 lines"; correct?

16 A. That's what it says.

17 Q. Would you please read what it says the suggested  
18 answer on the question of causation should be?

19 A. Yeah, I can read that from this document. It  
20 says on -- on page three of this document "'We  
21 recognize that a substantial number of medical  
22 authorities have expressed the opinion that a causal  
23 relationship has been established between cigarette  
24 smoking and lung cancer and certain other diseases,  
25 while some doctors and other scientific experts have

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1 expressed doubts about the evidence. It seems to us,  
2 that in the absence of clinical proof of the"  
3 mechanisms -- or "mechanism involved, the issue of  
4 causation at the present time remains controversial.  
5 This controversy can only be finally resolved through  
6 further research and the industry is prepared to  
7 cooperate with government and medical authorities in  
8 any such work," end of the quotation.

9 Q. Now, sir, if B.A.T. Industries believed at the  
10 time this document was written or anytime thereafter  
11 that cigarette smoking caused disease, would it tell  
12 the public that?

13 MR. SHEFFLER: Objection to the form.

14 MR. FRANKEL: And lack of foundation.

15 A. And let me just try and respond to your  
16 question, maybe just one point. I believe this is a  
17 BATCO document. It is -- is headed Millbank, London,  
18 which was the head office of British-American Tobacco  
19 Company Limited. To try and to respond to your  
20 question, and should B.A.T. Industries or  
21 British-American Tobacco Company speak accurately on  
22 its knowledge of the scientific matters, the answer  
23 is yes.

24 Q. Well my -- that wasn't my question. My question  
25 was: Does B.A.T. Industries -- I'm sorry, strike

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1 that.

2 My question was: If B.A.T. Industries believed  
3 that cigarette smoking caused disease, would it tell  
4 the public?

5 MR. SHEFFLER: Objection. The question was  
6 asked and answered. Objection to the form.

7 A. If British-American Tobacco Company understood  
8 the biological mechanisms related to smoking and  
9 various diseases, it would certainly wish to ensure  
10 that that was -- was public knowledge. My assumption  
11 is once -- once those mechanisms are identified, that  
12 will be a matter of very much public information. I  
13 don't know whether that information will come from us  
14 or from the -- the medical researchers that identify  
15 this mechanism.

16 Q. Well I'm not talking about biological  
17 mechanisms. I'm asking you this: If that --

18 MR. SHEFFLER: Objection to statements of  
19 counsel.

20 MS. WIVELL: Excuse me, I would appreciate  
21 you not interrupt me, sir.

22 Q. I'm not talking about biological mechanisms,  
23 sir. I'm asking you if B.A.T. Industries believed  
24 that cigarette smoking caused disease, would it tell  
25 the public so.

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1 MR. SHEFFLER: Objection to statements of  
2 counsel, objection as asked and answered, objection  
3 to the form.

4 A. The answer again is yes, but we can't ignore  
5 biological mechanisms because in terms of creating a  
6 full understanding of what is the statistical  
7 relationship between smoking and various diseases,  
8 the biological mechanisms are critical in terms of  
9 reaching that understanding. And that's why  
10 British-American Tobacco Company does research in  
11 this area, as do various academic institutions around  
12 the world are still researching to try and find some  
13 answers on this issue.

14 Q. Sir, if BATCO believed that cigarette smoking  
15 caused disease, would it tell the public?

16 MR. SHEFFLER: Objection to the form.

17 A. I mean, again I think the answer's yes, once the  
18 biological mechanisms have been identified, and it's  
19 certainly the position of British-American Tobacco  
20 Company that we will continue to invest in research  
21 attempting to find those mechanisms. Once that is  
22 out in public, then most certainly one would hope  
23 people would be informed. The fact is that the  
24 public health authorities have made a judgment based  
25 on statistics already and they have -- they have --

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1 they've clearly given their view that smoking is  
2 causally related to certain diseases, and we respect  
3 that view.

4 Q. Move to strike the nonresponsive portion.

5 Sir, my question is simple, and it's this: If  
6 BATCO believed that cigarette smoking caused disease,  
7 it would tell the public so, wouldn't it?

8 MR. SHEFFLER: Objection to the statements  
9 of counsel, objection as asked and answered.

10 A. And the answer is again British-American Tobacco  
11 Company should and -- and will give statements to the  
12 public that reflect its understanding of the  
13 scientific issues, yes.

14 Q. Okay. Now, would B.A.T. Industries tell the  
15 public that it believed cigarette smoking caused  
16 disease even if other members of the tobacco industry  
17 didn't believe that to be the case?

18 MR. SHEFFLER: Objection to the form, calls  
19 for speculation, overbroad.

20 A. I mean, it is a matter of speculation, but I  
21 can -- I can give you a response in that, I mean,  
22 where I take information related to smoking and  
23 health is from the scientific literature and from our  
24 research. I don't take any notice at all as to what  
25 other companies, whether it be tobacco companies or

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1 other companies, say on the matter.

2 Q. All right. Let me ask about BATCO. If BATCO  
3 believed that cigarette smoking caused disease, would  
4 it tell the public even if other members of the  
5 tobacco industry didn't believe that smoking caused  
6 disease?

7 MR. SHEFFLER: Objection, calls for  
8 speculation, objection to the form.

9 A. Again, I mean, regarding the speculation of your  
10 question, I can still give an answer, and the answer  
11 would be, I mean, my view, British-American Tobacco  
12 Company -- and I -- I can state that because it would  
13 be my view -- wouldn't take any notice of what anyone  
14 else was saying, that whatever we would say would  
15 have to be based on the scientific literature and  
16 scientific research.

17 Q. So is it fair to say then that BATCO and B.A.T.  
18 Industries would tell the public if they believed  
19 smoking and -- smoking caused disease even if their  
20 competitors didn't believe that?

21 MR. SHEFFLER: Objection to the form, same  
22 objections, asked and answered.

23 A. I mean, again I -- I say I -- my -- my own view  
24 is I -- I would give statements on this matter as I  
25 wouldn't take any note at all what -- what the other

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1 tobacco companies were saying. What I would rely  
2 upon is the scientific information.

3 Q. And when you say your own view, you are the  
4 person who would make the statement for BATCO if it  
5 believed that cigarette smoking caused cancer;  
6 right?

7 MR. SHEFFLER: Objection.

8 A. Most likely, yes.

9 Q. Okay. And if B.A.T. Industries believed that  
10 cigarette smoking was addictive, would it tell the  
11 public even if other members of the tobacco industry  
12 didn't believe that?

13 MR. SHEFFLER: Objection, speculation,  
14 overbroad.

15 A. And again, my view is that it wouldn't matter  
16 what other companies were saying. I would give a  
17 view based on what the scientific information says.

18 Q. All right. And if the scientific information  
19 that was available to BATCO showed that cigarette  
20 smoking was addictive, would you tell the public even  
21 if the other members of the tobacco industry didn't  
22 believe it?

23 MR. SHEFFLER: Same objection.

24 A. And again, as I tried to answer before, the  
25 answer is yes, it doesn't really matter what other

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1 companies say. I mean, the information again should  
2 be based on the scientific information available.

3 Q. And if the scientific information available  
4 showed that cigarette smoking was addictive, BATCO  
5 would tell the public even if the other members of  
6 the industry didn't --

7 MR. SHEFFLER: Objection.

8 Q. -- believe it; right?

9 MR. SHEFFLER: Excuse me, excuse me.

10 Objection, asked and answered repeatedly as well as  
11 speculation, overbroad.

12 A. And -- and again, my response is that it really  
13 doesn't matter what other companies say. It's got to  
14 be based on what the scientific literature says.

15 Q. Well, sir, isn't it a fact that BATCO and B.A.T.  
16 Industries have determined that it was important that  
17 the industry speak as one with one voice on these  
18 issues?

19 MR. SHEFFLER: Objection to the form.

20 A. And I think in that there's a commonality within  
21 the -- the science, there certainly would have been  
22 some understanding that in particular situations  
23 there may be, for example, National Manufacturers'  
24 Associations which would -- which would give views in  
25 general on -- on what -- what the -- the various

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1 views of members of the industry are. That does not  
2 mean to say in any shape or form that those -- if  
3 those views were inconsistent in terms of what the  
4 science says, that British-American Tobacco would go  
5 along with any other statement, and our views would  
6 still be based very much upon the science and that is  
7 very much what we would need to be in control of.

8 Q. Well isn't it a fact that policy at BATCO was to  
9 try and persuade other members of the industry to  
10 speak and behave in ways that were likely to  
11 safeguard the future of the industry as a whole?

12 MR. SHEFFLER: Objection to the form,  
13 overbroad.

14 A. No. I think what -- what you've seen through  
15 history just as -- as you see with pretty much any  
16 industry, you find that there's the formation of  
17 Manufacturers' Associations, which provide a single  
18 point of view on industry matters. I must say, for  
19 example, in the United Kingdom where there is a  
20 National Manufacturers' Association which we are an  
21 associate member of, if someone asked  
22 British-American Tobacco a view on -- on smoking and  
23 health, I would give the answer. I wouldn't refer  
24 them to the National Manufacturers' Association.

25 Q. Well, sir, isn't it a fact that it has been the

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1 aim of BATCO to try and persuade all those concerned  
2 with cigarettes toward a course of action designed to  
3 preserve the industry's long-term commercial  
4 interests?

5 MR. SHEFFLER: Objection to the form,  
6 overbroad.

7 A. I mean, I think in terms of the document you've  
8 just asked me to read, I mean, there were some points  
9 in that document that might be expressed in that  
10 way. But the way I read this document is very much  
11 ensuring that -- or suggesting that the various parts  
12 of the tobacco operation act responsibly, work with  
13 medical authorities in order to ensure that there's  
14 full coop -- cooperation with those -- those  
15 authorities.

16 Q. Sir, would you turn to the page that ends with  
17 Bates number 866 of Exhibit 316. And there do you  
18 see the phrase "Main aim"?

19 A. I'm sorry. It's 866?

20 Q. 866.

21 A. Yes, at the top there's a -- there's a bit on  
22 the side which says "Main aim."

23 Q. All right. And it says, quote, "Our aim is to  
24 persuade all those concerned - other members of the  
25 industry, members of the medical profession and

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1 governments - toward courses of action acceptable to  
2 consumers and the public which are designed to  
3 preserve the industry's long-term commercial  
4 interests, and at the same time to be as reasonable  
5 and realistic as possible in the light of scientific  
6 developments"; correct?

7 A. That's what it says on that page.

8 Q. All right. And, sir, isn't it a fact that  
9 B.A.T. during this period of time in the late '60s  
10 and early '70s did try and convince the tobacco  
11 companies of the world to speak as one voice on the  
12 issue of smoking and health?

13 MR. SHEFFLER: Objection, overbroad, asked  
14 and answered.

15 A. I mean, as far as I'm aware, there was no  
16 concerted effort to try and ensure the companies  
17 spoke with one voice other than clearly in some  
18 countries there were National Manufacturers'  
19 Associations that were formed to talk typically about  
20 economic issues as opposed to smoking-and-health  
21 issues. I think what this -- this document reflects  
22 is -- is the need, as -- as you said here, to be  
23 reasonable and realistic as possible in light of  
24 scientific developments and again, as we go through  
25 the document, of British-American Tobacco wishing to

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1 work with -- with -- in cooperation with  
2 governments.

3 Q. Well, sir, are you denying the fact that BATCO  
4 spearheaded an effort so that the industry would  
5 speak as one voice on the issue of smoking and  
6 health?

7 MR. SHEFFLER: Objection to the form.

8 A. I mean, it's my understanding that  
9 British-American Tobacco hasn't spearheaded an effort  
10 to try and persuade anyone other than the people  
11 taking a look at the view of the scientific matters.  
12 I mean, clearly within this document what it says is  
13 that, where possible, there should be industry  
14 associations in terms of the broad areas of -- that  
15 concern the tobacco industry, but it -- what it also  
16 says in this document is that it is -- is absolutely  
17 important that the company works with medical and  
18 government opinion.

19 I think that has been the case. It's very  
20 clearly illustrated in -- in the U.K. situation, and  
21 in 1973, which is the date of this document, we saw  
22 in the U.K. the -- the formation of the Independent  
23 Scientific Committee on Smoking and Health, which  
24 was -- very clearly, as you go through that period of  
25 time from '73 onwards, illustrates what has been said

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1 in this document as being a series of actions very  
2 much in collaboration with the government and the  
3 public health authorities.

4 MS. WIVELL: Mr. LaBorde, could you get out  
5 Exhibit 499, please.

6 (Plaintiffs' Exhibit 499 was handed  
7 to the witness.)

8 THE WITNESS: Thanks.

9 BY MS. WIVELL:

10 Q. Sir, showing you what's been previously marked  
11 as Exhibit 499, this is a document entitled "STRICTLY  
12 CONFIDENTIAL, TO ALL NUMBER 1s OF ASSOCIATED  
13 COMPANIES, SMOKING AND HEALTH"; correct?

14 A. Yeah, that's what it says at the top of the --  
15 of the first page of this document. It doesn't have  
16 any headed notepaper or anything, but that's what it  
17 says.

18 Q. Now it says "Developments since March 1969";  
19 correct?

20 A. That's what it says.

21 Q. Then it goes on to say "Since the document  
22 attached to Mr. Dobson's letter of 25th March 1969  
23 was sent to all Number 1s there have been certain  
24 major developments which have led us to re-examine  
25 our policy in this matter"; correct?

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1 A. That's what it says.

2 Q. Now, sir, if you turn to page 858 or the  
3 document that ends -- or the page that ends with  
4 Bates number 858, do you see a heading entitled  
5 "B.A.T. Leadership"?

6 A. It says "B.A.T. Leadership," yes.

7 Q. Then it says "The fact that we are the largest  
8 tobacco company in the world, with extensive  
9 interests in many countries, imposes on us the  
10 responsibility to persuade other members of the  
11 industry to agree to behave in ways likely to  
12 safeguard the future of the industry as a whole";  
13 correct?

14 A. That's what it says in this document.

15 Q. And, sir, isn't it a fact that after 1976 when  
16 B.A.T. Industries became the holding company  
17 responsible for the tobacco interests of the B.A.T.  
18 Group that it was a policy of B.A.T. Industries that  
19 the tobacco industry would only be able to defend  
20 itself adequately against attack on the  
21 smoking-and-health issues if it presented a united  
22 front?

23 MR. SHEFFLER: Objection to the form,  
24 objection to the assumptions in the question.

25 A. It's my understanding that in many situations

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1 the various tobacco companies have worked together  
2 through trade association. I don't think that that  
3 takes anything away in terms of the types of actions  
4 that have happened, and for example, again in the  
5 United Kingdom it's clear that what the U.K.  
6 government did was -- was to ask to cooperate with  
7 all of the tobacco companies. So the whole program  
8 of product modification in the U.K. wasn't involved  
9 just one company, involved all the tobacco companies  
10 together, primarily because it was the government's  
11 aim to drive through product modification and they --  
12 they could do that through the collaboration with  
13 the -- the companies.

14 Q. So you're saying that B.A.T. did collaborate  
15 with other tobacco industry companies to determine  
16 what it should say publicly about smoking and  
17 health?

18 MR. SHEFFLER: Objection to the form of the  
19 question, mischaracterizes the testimony.

20 A. Yeah, that's not what I said at all, and I mean,  
21 I can't remember any instance during my employment at  
22 British-American Tobacco that I've sat down and  
23 discussed with a member of another company what  
24 should be said on smoking and health. I mean, I have  
25 on occasion discussed what -- what the science is,

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1 but certainly not the public statements. The public  
2 statements that British-American Tobacco make are our  
3 own statements based on our own views of the  
4 science.

5 What I -- what I was saying was that there have  
6 clearly been both in the United Kingdom and the  
7 United States whole series of programs where  
8 government and industry have worked together, and  
9 that relationship is clear that not just one but many  
10 tobacco companies worked together with the government  
11 on, for example, product modification programs.

12 Q. Sir, I'm not talking about government and  
13 industry. I'm talking about within the industry.  
14 Have you investigated to determine whether or not  
15 there were actual meetings or conversations to  
16 determine what should be said publicly on  
17 smoking-and-health issues so the industry could speak  
18 at -- with one voice?

19 MR. SHEFFLER: Objection to the form of the  
20 question, objection to counsel's statements as  
21 improper.

22 A. I mean, I have personal knowledge certainly of a  
23 fairly long period of time where -- where I've --  
24 I've been involved in these matters, and again I  
25 state that there's not been a point in time where --

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1 where I would take a view just because another  
2 company would say it. I mean, I would take a view on  
3 the basis of science. In that the science is common,  
4 it's hardly surprising that the various different  
5 companies may express their views in a similar manner  
6 on the basis of that science.

7 I -- I don't believe from anything that I've  
8 investigated that anyone has sat down around in a  
9 room as a group of companies and said, "Look, this is  
10 what every single company should say," and if you  
11 look at the, I mean, public statements of companies,  
12 you'll find they are different and things that we may  
13 say, for example, on environmental tobacco smoke may  
14 be different from things that another company would  
15 say.

16 Q. Sir, you've only been the spokesperson for BATCO  
17 on these subjects since 1993; right?

18 MR. SHEFFLER: Object to the form.

19 A. I'm not the spokesperson, but I'm -- I'm  
20 certainly the one that's been significantly involved  
21 in this, but -- and again, I mean, I don't know  
22 whether it's a commonsense view or a view of -- of  
23 things that I've seen. Clearly National  
24 Manufacturers' Associations do -- and that's true of  
25 the United Kingdom and I -- I gather it's true of the

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1 United States -- try and represent an industry as --  
2 as one, but I mean, the thought that there's a  
3 gathering of -- of the industry around to make an  
4 agreement that a particular statement should be made  
5 I just don't see is -- is correct.

6 And I think in terms of what I've seen as  
7 statements from various companies, they're clearly  
8 not exactly the same language. And I mean, it's pure  
9 speculation, but I'd be highly surprised that within  
10 any other company the kind of statement that's laid  
11 out in this document on causation is reflected in  
12 another company's documents or their statements, but  
13 please surprise me if you can.

14 Q. All right. Sir, would you get out Exhibit 586.

15 A. Oh, I'm sorry. I didn't realize I have it.

16 Thank you.

17 Q. That's the document that's entitled "SMOKING AND  
18 HEALTH, STRATEGIES AND CONSTRAINTS"; correct?

19 A. Yeah, that's what it says at the top of this  
20 document.

21 Q. Would you turn to the page that ends with Bates  
22 number 560. The fourth paragraph there says "If it  
23 can be achieved it is better to speak as an industry  
24 and where this is possible BAT companies should seek  
25 to get the industry in any particular country to

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1 speak with one voice on policy matters"; right?

2 A. That's what it says there.

3 Q. Did you --

4 Were you aware of this paragraph before I  
5 pointed it out to you, sir?

6 A. No, but I'm -- I'm aware of -- of the general  
7 theme that, I mean, in many countries under National  
8 Manufacturers' Associations people work together. I  
9 don't get any understanding from this particular  
10 paragraph that British-American Tobacco Company is  
11 going to another company and saying, "Look, you've  
12 got to take our view. Don't look at the scientific  
13 issues related to that." And I think that's just not  
14 the way the real world has worked.

15 Q. And, sir, are you denying that B.A.T.  
16 Industries' policy is that the industry will only be  
17 able to defend itself adequately from attack if it  
18 speaks with a united voice?

19 MR. SHEFFLER: Objection. This question's  
20 been asked and answered repeatedly. I think we're  
21 getting to the point where it's argumentative and  
22 harassing.

23 MR. FRANKEL: And object to form.

24 A. I mean, I can answer as to British-American  
25 Tobacco Company's policy today is that, I mean, we

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1 will be self-determinant in terms of what our views  
2 are on -- on issues related to our business. Now you  
3 will find around the world various National  
4 Manufacturers' Associations that we will be members  
5 of. You will also find around the world many  
6 countries in which there aren't National  
7 Manufacturers' Associations. All we wish to do is to  
8 ensure that as far as -- as representations to the  
9 public and those are accurate on the basis of the  
10 science.

11 (Plaintiffs' Exhibit 587 was marked  
12 for identification.)

13 BY MS. WIVELL:

14 Q. Sir, showing you --

15 A. Thanks.

16 Q. -- what's been marked as Plaintiffs'  
17 Exhibit 587, these are 1982 B.A.T. board guidelines  
18 concerning public affairs; correct?

19 A. The -- yeah, the front of this document says  
20 "1982, B.A.T. BOARD GUIDELINES, PUBLIC AFFAIRS."

21 Q. All right. Would you turn to the page that ends  
22 with Bates number 237.

23 A. Yes, got it.

24 Q. This page is stamped multiple times with the  
25 word "SECRET," isn't it, sir?

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1 A. Yes, it is.

2 Q. And under point ten on this page marked

3 "SECRET," it says "The Tobacco Industry will only be

4 able to defend itself" adequate -- "adequately

5 against attack if it presents a united response";

6 correct?

7 A. That's what it says on point ten.

8 Q. All right. And is this the first time anyone

9 has shown this to you, sir, or were you aware of this

10 particular part of the policy before today?

11 A. Actually, no, I hadn't seen this before I came

12 over here. One point I would make is that the thing

13 that you've just read out is -- is titled "PART 1

14 ASSUMPTIONS," so I'm not sure whether that is -- is a

15 speculation or a matter of fact.

16 Q. Well it says --

17 Before it says "PART 1 ASSUMPTIONS," it says

18 "B.A.T BOARD GUIDELINES, SMOKING ISSUES"; correct?

19 A. It says "B.A.T BOARD GUIDELINES, SMOKING ISSUES,

20 PART 1 ASSUMPTIONS."

21 Q. Now, sir, these guidelines were set up and it

22 was expected they would be followed; isn't that

23 true?

24 MR. SHEFFLER: Objection to the form.

25 MS. WIVELL: Let me rephrase the question.

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1 Q. It was expected that these guidelines would be  
2 followed; isn't that true?

3 MR. SHEFFLER: Objection to the form.

4 A. I mean, this strikes me as a paper that perhaps  
5 was discussed at some board meeting or some other  
6 meeting within British-American Tobacco which looked  
7 at a variety of assumptions, and we have -- what is  
8 it? -- gosh, 48 assumptions here dated March 1982,  
9 and then it goes on later to talk about general  
10 strategies, and -- and I'd need to read this to -- to  
11 give you a view on that.

12 But for example, in part II, general strategies,  
13 it talks about social awareness and responsibility,  
14 and point 2.2, it says "Above all we must ensure that  
15 we never knowingly mislead our consumers and staff  
16 and that we, as manufacturers, are able to  
17 demonstrate that we are acting responsibly and have  
18 concern for their interests at all times." I mean,  
19 I'd have to read the rest of the document to -- to  
20 give you our key points, but to, I mean, your -- your  
21 key question, and that that first part was -- was an  
22 assumption. I'm not sure what the assumption is  
23 based on.

24 Q. All right. Are you telling us that you speak on  
25 behalf of BATCO but you've never read board

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1 guidelines on public affairs?

2 MR. SHEFFLER: Objection to the form.

3 A. I mean, I've obviously been very closely  
4 involved in terms of what British-American Tobacco  
5 has done in public, and I can certainly give you  
6 testimony to what British-American Tobacco have --  
7 have done in public. What is here I -- I frankly,  
8 no, have not seen, but I can testify as to what --  
9 what my view is of -- of the actions that  
10 British-American Tobacco has -- has taken over the  
11 years.

12 Q. Well, sir, have you ever read any B.A.T. board  
13 guidelines on public affairs?

14 A. I'm not sure how many guidelines there have  
15 been. In terms of -- I mean, I gather and I have  
16 seen a variety of -- of think pieces. I'm not sure  
17 if that's a understandable explanation of what I'm  
18 trying to describe, but a variety of -- of -- of  
19 documents where people try and make assumptions on --  
20 in -- in regards to the public environment as to what  
21 may happen, which may affect the future environment.  
22 And I think that's been done in a variety of -- of  
23 different forms.

24 I think in terms of -- of what British-American  
25 Tobacco has done, no matter what guidelines are

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1 there -- and there are -- certainly I have been  
2 involved in writing some guidelines to companies in  
3 relations -- to ensure they speak accurately in  
4 relation to smoking and health. I can certainly  
5 speak to the actual actions of the company through --  
6 through -- you know, through history.

7 Q. Sir, isn't it true that the public position on  
8 smoking and health which has been established for the  
9 B.A.T. Group companies is dominated by legal  
10 considerations arising out of smoking-related  
11 lawsuits brought in the United States?

12 MR. SHEFFLER: Objection to the form,  
13 objection to the assumptions not based upon evidence  
14 in the record and objection to asked and answered.

15 A. Absolutely not. They're based on the science.

16 (Plaintiffs' Exhibit 588 was marked  
17 for identification.)

18 THE WITNESS: Thanks.

19 BY MS. WIVELL:

20 Q. Sir, showing you what's been marked as  
21 Plaintiffs' Exhibit 588, this is a -- entitled "TALK  
22 TO CONFERENCE, MARKETING LOW DELIVERY PRODUCTS,  
23 19.1.82, THE TOBACCO INDUSTRY & ITS IMPACT ON"  
24 SCIENCE "& MEDICAL ATTITUDES AND" OPINIONS; correct?

25 A. It says that. This is a talk to a conference,

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1 and I -- I'd have to read on to see who was giving  
2 that talk to the conference.

3 Q. Sir, would you turn to the page that ends with  
4 Bates number 243.

5 A. Yes, I have that.

6 Q. And on this or --

7 During this talk regarding scientific and  
8 medical attitudes and opinions, on this page it says  
9 "Clearly the legal position - especially USA - is the  
10 key concern"; correct?

11 MR. SHEFFLER: Objection to the predicate  
12 to the question. If the question is simply does it  
13 state that, there's no objection, but I object to the  
14 predicate.

15 A. I mean, it -- the document says "Clearly the  
16 legal position - especially USA - is the key concern"  
17 as one line in -- on page five.

18 Q. All right. And page five -- let me rephrase the  
19 question.

20 Sir, on page 243 it says "Clearly the legal  
21 position - especially USA - is the key concern";  
22 correct?

23 A. As I said, on page five there's one line in --  
24 in this whatever it is, a -- a -- a set of notes for  
25 someone giving a -- a presentation, says "Clearly the

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1 legal position - especially USA - is the key  
2 concern."

3 Q. And then it goes on to say "We believe it is  
4 possible to discuss the issues and the facts without  
5 jeopardising the industry. The US law firms who  
6 defend the industry in law suits have yet to agree  
7 the way, and it is essential that we have their  
8 approval before proceeding in any public sense";  
9 correct?

10 A. Again that's what it states on -- on page five  
11 as one point in a variety of points in this guidance  
12 note to whoever was giving this presentation to  
13 whichever conference.

14 Q. And, sir, does this help you recall that it was  
15 the legal position that dominates what is said  
16 publicly by the B.A.T. Group companies on the issue  
17 of smoking and health?

18 MR. SHEFFLER: Objection to form.

19 A. No. I mean, again I -- I -- I respond as I  
20 responded before, that fundamentally, I mean, our  
21 positions on smoking and health are absolutely  
22 dictated by what -- what is said in the scientific  
23 arena and what are the science related to those  
24 matters.

25 (Plaintiffs' Exhibit 589 was marked

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1                   for identification.)

2 BY MS. WIVELL:

3 Q.    Sir, showing you --

4 A.    Thanks.

5 Q.    -- what's been marked as Plaintiffs'

6 Exhibit 589, this is a document Bates numbered

7 105359751; correct?

8 A.    It's 1053597151, yeah.

9 Q.    I believe you read the number wrong, sir.

10 A.    Oh, I'm sorry.

11 Q.    Let me just ask my question again.

12        This is a document Bates numbered 105359751;

13 right?

14 A.    That's right.

15 Q.    Okay. It's entitled "B.A.T. : APPROACH TO

16 SMOKING AND HEALTH"; right?

17 A.    It says "B.A.T. : APPROACH TO SMOKING AND

18 HEALTH," dated 13th July 1973.

19 Q.    Sir, would you turn to the last page of the

20 document. Does the last paragraph of the document

21 begin with the statement "Finally it should be noted

22 that B.A.T. operates under two special constraints

23 due to" the "interests in the U.S.A. First, there

24 are legal cases pending in the U.S.A. which restrict

25 what B.A.T. and its officers say in public"?

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1 Correct?

2 A. That's what it says.

3 Q. Sir, and isn't it a fact that even today what  
4 B.A.T. and BATCO say in public is governed by legal  
5 considerations for cases relating to smoking and  
6 health --

7 MR. SHEFFLER: Objection.

8 Q. -- brought in the United States?

9 MR. SHEFFLER: Excuse me. Counsel, I'm  
10 sorry. Objection, asked and answered. Objection to  
11 the form.

12 A. No, obviously not. I mean, any statements that  
13 I make to public are based on -- on science, and I --  
14 I frankly don't give any consideration to litigation  
15 anywhere in the world as long as I make my statements  
16 based on science and I'm convinced that those  
17 statements are accurate.

18 Q. Sir, isn't it a fact that the public positions  
19 of the B.A.T. Group tobacco companies with respect to  
20 causation are dominated by legal considerations?

21 MR. SHEFFLER: Objection, asked and  
22 answered repeatedly.

23 A. And my answer is again -- is absolutely not.  
24 I'm responsible, at least in part, for ensuring that  
25 our public statements are as accurate as can be

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1 possible based on what scientific information is  
2 available.

3 Q. Sir, isn't it a fact that by denying a causal  
4 role for cigarette smoking in general, the B.A.T.  
5 Group hopes to avoid liability in particular cases?

6 MR. SHEFFLER: Objection, calls for  
7 speculation, overbroad.

8 A. I mean, let me perhaps give you some information  
9 on what our position is on smoking and health.  
10 What -- what we say and we will say clearly when  
11 asked is that we believe, for example, on smoking and  
12 lung cancer that smoking's an important risk factor.  
13 We also believe and have knowledge that public health  
14 authorities have used -- have -- have identified  
15 statistical data and they have -- they believe that  
16 smoking is a cause of lung cancer on the basis of  
17 that information. We respect their view. That does  
18 not stop us requiring to -- to undertake additional  
19 research and to fund independent research to try and  
20 identify biological mechanisms related to anything  
21 that may be in tobacco smoke and lung cancer.

22 So, I mean, my response is that -- my response  
23 is I've forgotten your question in the first place.  
24 I'm sorry.

25 Q. All right. Well let me rephrase my question.

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1 Does B.A.T. Industries believe smoking causes  
2 lung cancer?

3 A. B.A.T. Industries would refer to the knowledge  
4 resident at British-American Tobacco Company, and our  
5 view is that smoking, for example, and lung cancer is  
6 an important risk factor, and again I would say that  
7 it is clear that public health authorities have made  
8 judgments for many, many years that smoking is a  
9 cause of lung cancer. What is evident is that we  
10 continue to sponsor research to try and identify the  
11 biological -- biological mechanisms. We have to do  
12 that in order to identify something that we may be  
13 able to change within the product, and frankly it's  
14 not simply us doing that type of research. It's  
15 research that's carried out in universities around  
16 the world trying to understand the fundamental  
17 biological mechanisms related to lung cancer.

18 Q. Move to strike as nonresponsive. Sir, my  
19 question is not what public health authorities  
20 believe. My question is: Does B.A.T. Industries  
21 believe that cigarette smoking causes lung cancer?  
22 It's simple. "Yes" or "no"?

23 MR. SHEFFLER: I object to the statements  
24 of counsel. I object to the instruction of counsel  
25 to answer the question in any way -- "yes" or "no."

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1 The witness is entitled to answer the question in any  
2 way that's appropriate, and I would object on the  
3 basis of asked and answered.

4 A. Okay. Well let me answer it as -- as befits the  
5 complexity of -- of the situation, and as I said, we  
6 believe and it's clear from the statistical data  
7 that's been produced over many years that smoking,  
8 for example, is an important risk factor for lung  
9 cancer. We also believe that the biological  
10 mechanisms that may relate a substance in tobacco  
11 smoke to lung cancer have not been identified. We  
12 continue to support research in that area, as does  
13 the general academic community.

14 Q. So no, you don't believe cigarette smoking  
15 causes lung cancer; is that right?

16 MR. SHEFFLER: Objection to the form of the  
17 question. The witness can answer the question as he  
18 deems appropriate.

19 A. I mean, that's not what I said at all. What  
20 I -- what I said is that we respect in practical  
21 terms what -- public health authorities, and if you  
22 ask certainly from where I come from in the U.K.  
23 anyone in the country what is their view on -- on  
24 smoking and health, they would take their view from  
25 what public health authorities have said and would

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1 say they believe smoking causes lung cancer.

2 As a company, we cannot stop there. We can't  
3 rely entirely simply on the epidemiological data.  
4 What we need to understand is the biological  
5 mechanisms such that we could do something in  
6 relation to our product which would be accepted  
7 perhaps by public health authorities and be  
8 beneficial.

9 Q. Well let me ask this: Does BATCO believe that  
10 cigarette smoking causes lung cancer?

11 A. And my answer is -- is probably almost exactly  
12 the same as -- as -- as I've just given before, but  
13 I -- I can restate it again if you wish.

14 Q. Well "yes" or "no," does BATCO believe that  
15 cigarette smoking causes lung cancer?

16 MR. SHEFFLER: Objection. The witness can  
17 answer the question as he deems appropriate.

18 A. And again, I mean, BATCO's belief is that this  
19 issue is too complex to give a simple yes-or-no  
20 answer, and what my response is based on the  
21 scientific evidence is that smoking is an important  
22 risk factor for lung cancer. It is the view of  
23 public health authorities that -- that smoking is a  
24 cause of lung cancer. We respect their view, but for  
25 BATCO as a company wishing to make changes to its

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1 product, we cannot stop there. We have to continue  
2 to investigate, as the general academic community is,  
3 the biological mechanisms that may relate some  
4 substance in tobacco smoke to -- to lung cancer.

5 Q. Sir, isn't it a fact that your answer which  
6 you've just provided to the ladies and gentlemen is  
7 carefully crafted to avoid legal liability for  
8 smoking cases in the U.S.?

9 A. Absolutely not. I mean, my -- my answer is  
10 based on my fundamental understanding of the  
11 scientific knowledge. My answer is based upon what I  
12 understand of what public health authorities have  
13 said. My answer is based upon what I believe the  
14 company has wished to do for many years in terms of  
15 trying to look at product modifications which were  
16 responsive to the needs of the public health  
17 authorities.

18 Q. Sir, isn't it true that by repudiating a causal  
19 role for cigarette smoking in general, your companies  
20 hope to avoid liability in cigarette cases in the  
21 U.S.?

22 MR. SHEFFLER: Objection to the form of the  
23 question, assumes facts not in evidence.

24 A. And the answer yet again is that the statement  
25 that I gave you in relation to smoking and health is

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1 based entirely upon the science, and I have no  
2 considerations at all when I make that statement as  
3 to whether there may be --

4 (Telephone interruption.)

5 A. -- whether there may be liability or not.

6 Sorry.

7 MS. WIVELL: Let's go off the record.

8 THE REPORTER: Off the record, please.

9 (Discussion off the record.)

10 BY MS. WIVELL:

11 Q. Sir, showing you what's been marked as

12 Exhibit 443, this is a document entitled "CIGARETTE

13 SMOKING AND CAUSAL RELATIONSHIPS"; correct?

14 A. It says at the top "CIGARETTE SMOKING AND CAUSAL  
15 RELATIONSHIPS," yeah.

16 Q. The first paragraph says "The public position of  
17 tobacco companies with respect to causal explanations  
18 of the association of cigarette smoking and diseases  
19 is dominated by legal considerations"; correct?

20 A. That's a correct reading of what is said in this  
21 first page of the document.

22 Q. And it goes on to say "In the ultimate companies  
23 wish to be able to dispute that a particular product  
24 was the cause of injury to a particular person. By  
25 repudiation of a causal role for cigarette smoking in

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1 general they hope to avoid liability in particular  
2 cases"; correct?

3 A. Again that's what it says here.

4 Q. Sir, isn't it a fact that the answers that  
5 you've given today here are an attempt to repudiate  
6 the causal role of cigarette smoking in hopes to  
7 avoid liability in this case?

8 MR. SHEFFLER: Objection, asked and  
9 answered.

10 A. And the answer again is no.

11 Q. Now, sir, this document goes on to say "This  
12 domination by legal consideration thus leads the  
13 industry into a public rejection in total of any  
14 causal relationship between smoking and disease and  
15 puts the industry in a" particular "position with  
16 respect to product safety discussions, safety  
17 evaluations, collaborative" -- "collaborative  
18 research et cetera"; correct?

19 MR. SHEFFLER: It says actually "peculiar,"  
20 not "particular."

21 A. Yes, it does say "peculiar," but other than  
22 that, that's what it says in this document.

23 Q. All right. Well, sir, isn't it a fact that your  
24 answers today when I asked you about smoking and lung  
25 cancer were dominated by this very consideration

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1 that's set out in this document, Exhibit 443?

2 MR. SHEFFLER: Objection, asked and  
3 answered.

4 A. And again, the answer is absolutely not. My --  
5 my statements to you are based on considerations of  
6 science, not any legal matters.

7 Q. Now, sir, it goes on in the paragraph to say  
8 "The industry has retreated behind impossible  
9 demands for," quote, "'scientific proof,'" quote,  
10 "whereas such proof has never been required as a  
11 basis for action in the legal and political fields";  
12 correct?

13 A. Again that's what it says in this document.

14 Q. And isn't that exactly what your answer to these  
15 ladies and gentlemen of the jury did today, was  
16 retreat behind an impossible demand for scientific  
17 proof?

18 MR. SHEFFLER: Objection,  
19 mischaracterization of the prior testimony.

20 A. And the -- and the answer is absolutely not.  
21 What I -- what I said in my statement is that -- for  
22 example, let's take lung cancer. We believe that  
23 smoking's an important risk factor of lung cancer.  
24 We acknowledge and re -- respect public health  
25 authorities' judgment that smoking is a cause of lung

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1 cancer. We, along with many other people, continue  
2 to investigate what the biological mechanisms may be  
3 related to -- to lung cancer.

4 I mean, it's clearly the fact, whatever this  
5 document says, is that British-American Tobacco  
6 Company has worked in collaboration with governments,  
7 with academic scientists in trying to elucidate what  
8 may be the biological mechanisms for lung cancer, and  
9 as an -- an example of where that research continues,  
10 there was a paper last year in the Journal of Science  
11 by a scientist called Dennisenko that suggested that  
12 they for the first time identified a biological link  
13 between a substance in tobacco smoke and lung  
14 cancer. I think that is evidence that that research  
15 continues today in a -- in a laboratory setting to  
16 try and find what may be responsible for the  
17 association. In fact, the Dennisenko study didn't  
18 reach that, but the research continues today, and  
19 we're certainly active in -- in assisting the -- the  
20 general academic thrust in this area.

21 Q. Sir, isn't it a fact that basically all of your  
22 answers lead back to the fact that you're trying to  
23 not acknowledge causation because of the legal  
24 consequences?

25 MR. SHEFFLER: Objection. This has been

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1 asked and answered repeatedly.

2 A. And again the answer is absolutely not.

3 MS. WIVELL: Mr. LaBorde, could you get out  
4 Exhibit 444.

5 (Plaintiffs' Exhibit 444 was handed  
6 to the witness.)

7 THE WITNESS: Thanks.

8 BY MS. WIVELL:

9 Q. Sir, showing you what's previously been marked  
10 as Exhibit 444, this is entitled "THE CREDIBILITY OF  
11 THE INDUSTRY STANCE"; correct?

12 MR. SHEFFLER: Do you have another copy?

13 MS. WIVELL: (Shaking head.)

14 A. At the top of this document it's marked "(2) THE  
15 CREDIBILITY OF THE INDUSTRY STANCE." I assume  
16 there's earlier pages to this, but they're not  
17 present here.

18 Q. Sir, the second paragraph says "But, because all  
19 arguments eventually lead back to the primary issue  
20 of the legal consequences of acknowledging causation,  
21 the industry now finds itself unable to argue  
22 satisfactorily for its own successful continuity";  
23 correct?

24 MR. SHEFFLER: I would request that the  
25 next paragraph be -- be read into the record to put

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1 it in proper context.

2 She doesn't have to do that. That's -- my  
3 objection is -- is for the record for the court to  
4 rule upon at a later time, so if she's not going to  
5 do it, you have to answer the question.

6 THE WITNESS: Okay.

7 A. My answer to the question is that, yes, what you  
8 have read there is correct, and the document goes on  
9 to say that "It is probably well acknowledged by the  
10 majority of the informed public and Government bodies  
11 that the cigarette industry, in many areas of the  
12 world, has made major strides in reducing smoke  
13 deliveries - and, inter alia, in the nature of the  
14 smoke condensate. What is clearly not understood (or  
15 accepted), is the industry's apparent rigid rejection  
16 of causation."

17 And I think -- I mean, I haven't read the rest  
18 of this document, but that clearly goes to the fact  
19 that research has most clearly continued to try and  
20 elucidate what the statistical associations have  
21 shown.

22 (Plaintiffs' Exhibit 590 was marked  
23 for identification.)

24 BY MS. WIVELL:

25 Q. Sir, showing you --

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1 A. Thanks.

2 Q. -- what's been marked as Plaintiffs'

3 Exhibit 590, these are the Responses and Objections  
4 of B.A.T. Industries P.L.C. to Plaintiffs' First Set  
5 of Requests for Admissions to B.A.T. Industries  
6 P.L.C.; correct?

7 A. That's what it says on the first page here.

8 Q. All right. If you look at the first request,  
9 plaintiffs asked that B.A.T. Industries admit that  
10 smoking causes cancer; correct?

11 A. It says "Request Number 1. Admit that smoking  
12 causes cancer."

13 Q. And the last sentence of the response to Request  
14 Number 1 is "BAT Industries, therefore, denies that  
15 it has been scientifically established that cigarette  
16 smoking causes cancer and denies Request Number 1";  
17 correct?

18 A. Yeah, the whole sentence or the whole response  
19 reads "BAT Industries objects to Request Number 1 on  
20 the ground that it is vague and ambiguous. Smoking  
21 is widely reported as a risk factor for certain types  
22 of cancer. Numerous other factors are also reported  
23 to be risk factors for cancer, including but not  
24 limited to" -- "limited to genetic, environmental,  
25 social and behavioral factors. The causes of cancer

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1 are complex and have not been scientifically  
2 established. BAT Industries, therefore, denies that  
3 it has been scientifically established that cigarette  
4 smoking causes cancer and denies Request Number 1."

5 Q. And, sir, if we ask that question today, the  
6 answer would be the same, wouldn't it?

7 A. This was asked fairly recently. I would imagine  
8 that the answer would be the same in terms of the  
9 question that's asked, which, I mean, I agree is  
10 pretty vague and ambiguous and doesn't really allow  
11 the full description of -- of what is a very complex  
12 issue.

13 Q. Well what is vague and ambiguous about "smoking  
14 causes cancer," sir?

15 A. Because a "yes," "no" or very short response to  
16 that request, it doesn't fully respect what is a very  
17 complex issue, and the complex issue is related to  
18 the amount of research effort that is continuing in  
19 terms of trying to identify biological mechanisms.

20 Q. All that research over all those years and no  
21 one's come up with a mechanism yet; is that right?

22 A. I mean, that -- that is clearly correct, and you  
23 could ask anyone from the National Cancer Institute,  
24 I guess, or -- or whoever. That's pure speculation,  
25 but I mean, it's very clear if -- if you look to

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1 academic research around the world there is still a  
2 tremendous amount of effort trying to identify  
3 biological mechanisms for -- for lung cancer.

4 Q. The --

5 The how of how cigarettes cause lung cancer;  
6 right?

7 MR. SHEFFLER: Objection to the form of the  
8 question. It's --

9 A. No, it's -- it's not the how. And in fact, I  
10 mean, what research is undertaken is -- is the  
11 fundamentals, and frankly it's not just smoking.  
12 There still is not the understanding that is required  
13 in terms of why lung cancer occurs in any individual  
14 and exactly what happens through the progression of  
15 someone getting lung cancer. It's a fundamental  
16 scientific question that, for example, the  
17 International Agency for Research on Cancer based on  
18 Lyon -- based in Lyon in France continue to  
19 investigate.

20 Q. Well, sir, it's a fact, isn't it, that the  
21 majority of scientists around the world believe that  
22 smoking causes lung cancer; right?

23 MR. SHEFFLER: Objection to the form.

24 A. It would be speculation because I haven't done a  
25 survey of the majority of scientists. It would

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1 certainly be true to state that the majority and  
2 perhaps all governments and public health authorities  
3 have taken the view that smoking is a cause of lung  
4 cancer. That's quite understandable given what  
5 information they have to make their judgment, which  
6 is primarily epidemiological, and that the fact that  
7 the public health authorities have to make some sort  
8 of judgment one way or the other.

9 Q. Now, sir, the next request asks that B.A.T.  
10 Industries admit that smoking causes heart disease;  
11 right?

12 A. Yes, it says "Request Number 2. Admit that  
13 smoking causes heart disease."

14 Q. And B.A.T. Industries denied that smoking causes  
15 lung cancer -- or I'm sorry, that smoking causes  
16 heart disease, didn't it?

17 A. Well the response to Request Number 2 is "BAT  
18 Industries objects to Request Number 2 on the ground  
19 that it is vague and ambiguous. Smoking is widely  
20 reported as a risk factor for certain types of heart  
21 disease. Numerous other factors are also reported to  
22 be risk factors for heart disease, including but not  
23 limited to genetic, environmental, social and  
24 behavioral factors. The" cause "of heart disease" --  
25 or "the causes of heart disease," I'm sorry, "are

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1 complex and have not been scientifically  
2 established. BAT Industries, therefore, denies that  
3 it has been scientifically established that cigarette  
4 smoking causes heart disease and denies Request  
5 Number 2."

6 Q. Sir, isn't it a fact that most of the  
7 governments throughout the world believe that  
8 cigarette smoking causes heart disease?

9 A. I think the view of the majority of governments  
10 around the world is that smoking is one of the causes  
11 of heart disease, alongside cholesterol and alongside  
12 things like diet in general.

13 Q. Sir, isn't it a fact that the vast majority of  
14 scientists throughout the world believe that smoking  
15 causes heart disease?

16 MR. SHEFFLER: Objection, overbroad.

17 A. And again, I mean, I have not done a survey of  
18 all the scientists around the world, and my guess is  
19 that actually if you -- and I don't know how you'd  
20 term what a scientist is, but my guess is the  
21 overwhelming majority of scientists haven't  
22 considered this matter in any depth. Having said  
23 that, it is most clear that the government and public  
24 health authorities have made judgments on this  
25 issue.

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1 Q. All right. And do you believe that B.A.T.  
2 Industries is in a better position than the public  
3 health authorities, say, in the United States to  
4 determine whether or not smoking causes heart  
5 disease?

6 A. As I've said in -- in previous responses,  
7 British-American Tobacco respects the views of public  
8 health authorities. In practical terms what you find  
9 is there is still considerable research going on,  
10 some of which is sponsored by British-American  
11 Tobacco, into understanding the fundamental  
12 mechanisms related to lung cancer, related to heart  
13 disease. And in practical terms, as you'll see  
14 really, for example, in the collaboration that the  
15 company has had with, for example, the British  
16 government, what there has been is a -- a very  
17 long-term serious research effort to see what could  
18 be done about a product in order that there may be  
19 changes that would be accepted by public health  
20 authorities.

21 Q. Sir, move to strike as nonresponsive. That  
22 wasn't my question.

23 My question is simply this: Is B.A.T.  
24 Industries in a better position than the public  
25 health authorities in the United States to determine

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1 whether or not smoking causes heart disease?

2 MR. SHEFFLER: Object to counsel's  
3 statements. The question was asked and answered.

4 A. And -- and my response is it's actually in a  
5 different position. Public health authorities have  
6 to make a judgment and give a view to the public  
7 based on the information they have. In terms of  
8 British-American Tobacco, what we have to do is have  
9 enough understanding, and -- and you see this yet  
10 again if you refer to the kind of collaborative work  
11 that the company has done with governments, an  
12 understanding that would lead to a change in the  
13 product that would be accepted as being beneficial by  
14 public health authorities.

15 Q. Well I'm not sure that the jury would understand  
16 what your answer is, sir. "Yes" or "no," is B.A.T.  
17 Industries in a better position than the public  
18 health authorities in the United States to determine  
19 whether smoking causes lung disease?

20 MR. SHEFFLER: Objection to the form of the  
21 question, objection to counsel's statements and  
22 objection to instruction to answer the question in  
23 any particular way. The witness is entitled to  
24 answer the question in the appropriate way.

25 A. And -- and my answer is that we're in a

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1 different position. Public health authorities have  
2 to give a view to their publics based on information  
3 they have at hand. It is again still a fact that  
4 there are governments around the world, certainly  
5 including the U.K. government, I would imagine  
6 including the U.S. government -- I'm not so familiar  
7 with the situation here -- that are contributing to  
8 fundamental scientific work to try and understand why  
9 there are statistical relationships between smoking  
10 and heart disease and smoking and lung cancer.

11 Q. Well you've told us, I think, that most of the  
12 governments believe that cigarette smoking causes  
13 heart disease. Is that a fair statement?

14 A. What I said was that if -- probably all  
15 governments have considered this matter, have made a  
16 judgment based on -- on what evidence they have at  
17 hand that smoking is a cause of lung cancer and --  
18 and smoking is one of the causes of heart disease.

19 Q. Now you would agree also that most of the  
20 governments -- I'm sorry, strike that.

21 You would agree, wouldn't you, that all of the  
22 governments in the world also believe that cigarette  
23 smoking causes arteriosclerosis? Right?

24 A. I mean, again, I mean, my general belief of  
25 governments that have taken a view on this matter

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1 from public health authorities is that they would be  
2 of the view that smoking is a cause of  
3 arteriosclerosis, you said?

4 Q. Yes, sir. And when the plaintiffs asked B.A.T.  
5 Industries to admit that smoking caused  
6 arteriosclerosis, what did B.A.T. say?

7 A. Well in response to that Request Number 3, the  
8 response to Request Number 3 was, as stated in this  
9 document, "BAT Industries objects to Request Number 3  
10 on the ground that it is vague and ambiguous.  
11 Smoking is widely reported as a risk factor for  
12 certain types of arteriosclerosis. Numerous other  
13 factors are also reported to be risk factors for  
14 arteriosclerosis, including but not limited to  
15 genetic, environmental, social and behavioral  
16 factors. The causes of arteriosclerosis are complex  
17 and have not been scientifically established. BAT  
18 Industries, therefore, denies that it has been  
19 scientifically established that cigarette smoking  
20 causes arteriosclerosis and denies Request  
21 Number 3."

22 Q. Now again here it says that in this answer  
23 "BAT ... objects to Request Number 3 on the ground  
24 that it is vague and ambiguous." Which of those  
25 words are vague and ambiguous, "Admit that smoking

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1 causes arteriosclerosis"? Which one?

2 MR. SHEFFLER: Objection to the form.

3 A. I mean, the question, as I tried to express it  
4 before, is that it's trying to give a very simple  
5 answer to what is a very complex area of research,  
6 and -- and again, I mean, it is absolutely true that  
7 public health authorities have made judgments based  
8 on the information they have at their hand. The fact  
9 is that research continues in lung cancer, in heart  
10 disease -- disease, in arteriosclerosis, in trying to  
11 determine exactly what happens in the human and as  
12 they go through life and they're exposed to various  
13 different things.

14 And so I think it's difficult to give a simple  
15 answer to what is actually a very complex whole body  
16 of science.

17 Q. But you would agree that despite the fact that  
18 science is continuing to -- to figure out exactly  
19 what happens in a human being, that these governments  
20 have come to the conclusion that cigarette smoking  
21 causes arteriosclerosis; right?

22 MR. SHEFFLER: Objection, asked and  
23 answered.

24 A. On the basis of the information they have at  
25 their hand and given what their responsibilities are,

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1 which are to make judgments on the basis of that  
2 information, that's -- that's the view they've come  
3 to, and they've been very successful I think in  
4 promoting that view.

5 Q. All right. Now, sir, the next request asks that  
6 B.A.T. Industries admit that smoking causes strokes;  
7 right?

8 A. Yes, it does.

9 Q. And what did B.A.T. respond to Plaintiffs'  
10 request for that admission?

11 A. I can read that again. It says "Response to  
12 Request Number 4. BAT Industries objects to Request  
13 Number 4 on the ground that it is vague and  
14 ambiguous. Smoking is widely reported as a risk  
15 factor for certain types of strokes. Numerous other  
16 factors are also reported to be risk factors for  
17 strokes, including but not limited to genetic,  
18 environmental, social and behavioral factors. The  
19 causes of strokes are complex and have not been  
20 scientifically established. BAT Industries,  
21 therefore, denies that it has been scientifically  
22 established that cigarette smoking causes strokes and  
23 denies Request Number 4."

24 Q. Sir, you would agree that all governments who  
25 have considered the subject believe that cigarette

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1 smoking causes strokes?

2 A. It would be my view that, I mean, public health  
3 authorities that have looked at this would take the  
4 view that smoking is one of the causes of -- of  
5 strokes.

6 Q. And they take that view despite the fact that  
7 research on what actually happens in human beings who  
8 smoke and have strokes is continuing; right?

9 A. I think that's correct, and I think that is just  
10 what public health authorities do. No matter what  
11 the subject, they base their information on what is  
12 available to them at the time and need to make public  
13 pronouncements on the basis of that information.

14 Q. Now, sir, the next request asks B.A.T.  
15 Industries to admit that smoking causes emphysema;  
16 right?

17 A. Yeah, it says "Request Number 5, Admit that  
18 smoking causes emphysema."

19 Q. And again B.A.T. Industries denied that it has  
20 been scientifically established that cigarette  
21 smoking causes emphysema and denies Request Number 5;  
22 right?

23 A. Yeah, it says "BAT Industries objects to Request  
24 Number 5 on the ground that it is vague and  
25 ambiguous. Smoking is widely reported as a risk

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1 factor for certain types of emphysema. Numerous  
2 other factors are also reported to be risk factors  
3 for emphysema, including but not limited to genetic,  
4 environmental, social and behavioral factors. The  
5 causes of emphysema are complex and have not been  
6 scientifically established," and "BAT Industries,  
7 therefore, denies that it has been scientifically  
8 established that" smoking -- "cigarette smoking  
9 causes emphysema and denies Request Number 5."

10 Q. Now, sir, every government who has addressed the  
11 issue of whether cigarette smoking causes emphysema  
12 has determined that it -- that cigarette smoking does  
13 cause emphysema; isn't that true?

14 A. I believe that to be the case.

15 Q. And, sir, that is the case despite the fact that  
16 research continues to go on about what actually  
17 happens to people who smoke cigarettes and how  
18 emphysema is formed; right?

19 A. And again my response is yes, public health  
20 authorities have to make judgments based on -- on  
21 whatever matter they are considering on the basis of  
22 the information they have at their hand.

23 Q. Now, sir, the next request that plaintiffs asked  
24 was that Defendant B.A.T. Industries admit smoking  
25 causes chronic obstructive pulmonary disease; right?

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1 A. That's right.

2 Q. And basically B.A.T. Industries denied that  
3 cigarette smoking causes chronic obstructive  
4 pulmonary disease; right?

5 A. Again it says "BAT Industries objects to Request  
6 Number 6 on the ground that it is vague and  
7 ambiguous. Smoking is widely reported as a risk  
8 factor for certain types of chronic obstructive  
9 pulmonary disease. Numerous other factors are also  
10 reported to be risk factors for chronic obstructive  
11 pulmonary disease, including but not limited to  
12 genetic, environmental, social and behavioral  
13 factors. The causes of chronic obstructive pulmonary  
14 disease are complex and have not been scientifically  
15 established. BAT Industries, therefore, denies that  
16 it has been scientifically established that cigarette  
17 smoking causes chronic obstructive pulmonary  
18 disease ...."

19 Q. Now, sir, every government that's ever looked at  
20 the issue of whether cigarette smoking causes chronic  
21 obstructive pulmonary disease has come to the  
22 conclusion that cigarette smoking does cause that;  
23 right?

24 A. I think that is true. I don't know how many  
25 governments have specifically considered this and the

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1 other matters, but those that have I believe have  
2 reached a view that smoking is a cause of chronic  
3 obstructive pulmonary disease.

4 Q. And, sir, that they came to that view despite  
5 the fact that research is continuing on the subject  
6 of chronic obstructive pulmonary disease; right?

7 A. I gather that is the case, yes.

8 Q. All right. Now let me ask you this: Does  
9 B.A.T. Industries currently have any in-house  
10 research ongoing concerning the cause of chronic  
11 obstructive pulmonary disease?

12 A. We have a variety of research that we sponsor in  
13 relation to a variety of diseases. Your question I  
14 know was -- was in-house. In terms of research  
15 undertaken in our research laboratories, I don't  
16 think the answer would be yes. But for certainly in  
17 terms of the types of independent research that we  
18 continue to fund, the answer is yes.

19 Q. All right. Well again focusing on just in-house  
20 research, does B.A.T. Industries have any in-house  
21 research ongoing today on whether cigarette smoking  
22 causes emphysema?

23 MR. SHEFFLER: Do you --

24 MR. FRANKEL: Object to form, foundation.

25 MR. SHEFFLER: Are you asking B.A.T.

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1 Industries or BATCO?

2 MS. WIVELL: B.A.T. Industries.

3 MR. SHEFFLER: Oh, sorry.

4 A. Well let me respond in terms of British-American  
5 Tobacco Company, who are the people that undertake  
6 such research, and again, I mean, in-house there is  
7 research looking certainly at product modifications  
8 in terms of understanding biological mechanisms --  
9 and maybe I can save some time here -- in relation to  
10 emphysema, in relation to heart disease and in  
11 relation to lung cancer.

12 Much of that research would take place external  
13 to the company, and we would be supporting that  
14 research. The reason for that is that a lot of the  
15 research areas involved in this are highly complex.  
16 We would be looking at molecular biology typically,  
17 and you require very specialized and sophisticated  
18 equipment to be doing that. It makes far more sense  
19 given the breadth of the types of research that's  
20 required for us to be contributing to the scientific  
21 community rather than try and bring everything  
22 in-house.

23 Q. All right. So just so we're clear here, it  
24 would be fair to say that right now there is no  
25 B.A.T. Industries company, subsidiary company, that

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1 is doing work on -- in-house on the causing --  
2 causation -- strike that.

3 It would be fair to say that today there is no  
4 B.A.T. Industries subsidiary which is doing in-house  
5 work addressing the subject specifically of whether  
6 smoking causes cancer?

7 MR. SHEFFLER: Object to the form.

8 A. And -- and the response again is that I can't  
9 distinguish in-house from -- from external because  
10 it's the same pot of information. Clearly what we do  
11 is contribute to the external academic environment,  
12 trying to identify the mechanisms related to diseases  
13 such as lung cancer. What we do internally is -- is  
14 investigate a variety of things which may have some  
15 impact on that.

16 But the fundamental to try and understand the  
17 biological mechanisms, trying to identify at this  
18 point in time exactly what those -- those genetic  
19 mechanisms may be are really -- we are focusing upon  
20 the universities at the forefront of that science in  
21 terms of trying to make breakthroughs.

22 Q. But just so we're clear here, if I went through  
23 each one of these requests to admit Numbers 1 through  
24 6 and asked you whether research was being done  
25 in-house at any B.A.T. Group company on that issue,

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1 the answer would be no, wouldn't it?

2 MR. SHEFFLER: Objection. The answer would  
3 be what the answer was when you've asked the question  
4 before. Objection, asked and answered.

5 A. And the answer is that the majority of our  
6 thrust on -- on the leading edge of identifying  
7 biological mechanisms is -- is through the -- the  
8 contribution to the general academic environment by  
9 trying to identify biological mechanisms. That is  
10 not to say that we don't continue to do research  
11 in-house which -- which may be helpful to that in  
12 terms of trying to identify biological tests, in  
13 terms of continuing to try and understand the smoke  
14 chemistry.

15 But the -- the fundamental -- I think the  
16 fundamental breakthrough will come in top  
17 universities, who are really starting to understand  
18 the genetics of the human body and biological  
19 mechanisms which may be related to disease.

20 Q. But, sir, you can't as you sit here today direct  
21 us to one single ongoing study that in-house is  
22 directed at addressing the specific issue of whether  
23 smoking causes any one of these diseases, can you?

24 MR. SHEFFLER: Objection to the form,  
25 mischaracterizes testimony. Go ahead.

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1 A. And again it goes to, I mean, exactly what you  
2 mean in terms of a broad scope of -- of research  
3 related to these matters. What is clear -- and you  
4 can't distinguish in-house from external and --  
5 excuse me. It is clear what happens is that where  
6 fundamental breakthroughs in the science, this  
7 complex science, are going to happen is external, and  
8 I think there is a clear link between those working  
9 in-house with those external researchers doing  
10 evaluation of this issue.

11 So I really don't see from my point of view that  
12 where the research is done is -- is a matter of -- of  
13 consequence as long as that research has been  
14 undertaken.

15 Q. Move to strike as nonresponsive.

16 Sir, can you direct me to one single project  
17 that is going on in-house at any B.A.T. Group company  
18 today that addresses the issue of whether smoking  
19 causes any of these diseases?

20 A. If your request is looking at biological  
21 mechanisms specifically, then the answer is no,  
22 because we contribute to the scientific community,  
23 who are expert in that area.

24 MS. WIVELL: Why don't we take our lunch  
25 break.

1 THE REPORTER: Off the record, please.  
2 (Luncheon recess taken at 12:18 o'clock  
3 p.m.)  
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1 AFTERNOON SESSION

2 (Deposition reconvened at 1:43 o'clock  
3 p.m.)

4 BY MS. WIVELL:

5 Q. Sir, you have Exhibit 590 in front of you.

6 That's the Responses and Objections of B.A.T.

7 Industries to the Requests for Admissions that we  
8 were talking about; right?

9 A. Yes, I do.

10 Q. Now, sir, is the position that B.A.T. Industries  
11 has taken in Exhibit 590 a reasonable one with regard  
12 to the first six requests for admission?

13 A. It's my --

14 MR. SHEFFLER: Object to form.

15 A. It's my view that it's -- it's reasonable in  
16 terms of -- of -- of where the science stands, and I  
17 think the responses to each of the questions reflects  
18 the fact that there are complex scientific issues  
19 still being explored.

20 Q. Now, sir, would it be reasonable for others to  
21 believe that it has not been proven that cigarette  
22 smoking causes lung cancer?

23 MR. SHEFFLER: Objection to the form.

24 A. It depends who you are talking to. I mean, it's  
25 very clear that the public health authorities have --

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1 have -- have given a view that they believe that  
2 smoking causes lung cancer on the basis of the  
3 information they have before them, and they've  
4 certainly made very clear what their view is. If you  
5 ask a scientist in a university who's trying to  
6 understand what the biological mechanisms are related  
7 to lung cancer in general, I'm sure, I mean, they  
8 will tell you there is still more to be understood.  
9 Q. All right. And it would be, therefore,  
10 reasonable for smokers to believe that it has not  
11 been firmly established that cigarette causes  
12 smoking -- that cigarette smoking causes lung cancer;  
13 right?

14 MR. SHEFFLER: Object to the form.  
15 A. I think it's -- it's not reasonable in that, I  
16 mean, my experience, certainly particularly in the  
17 U.K. but in other countries around the world, is  
18 that, as far as I'm aware, not just smokers but the  
19 population in general are very well aware of what the  
20 public health authorities have said, and my guess is  
21 if you -- if you ask people, for example, in the  
22 United Kingdom what their view is, the view that they  
23 will give you is that smoking is -- is a cause of  
24 lung cancer on the basis of what they've heard for  
25 many years from public health authorities, from

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1 governments and from physicians.

2 Q. All right. I move to strike as nonresponsive.

3 My question was a little different, sir.

4 It would be reasonable, wouldn't it, for smokers  
5 to believe, as B.A.T. Industries does, that it has  
6 not been scientifically established that cigarette  
7 smoking causes cancer?

8 MR. SHEFFLER: Objection, asked and  
9 answered.

10 A. And again I think, I mean, in the real world  
11 what -- what you'll find is that people, smokers and  
12 nonsmokers, would have -- would have heard and the  
13 prevalent view which has been promoted through  
14 various routes that the public health authorities and  
15 governments believe that smoking is a cause of lung  
16 cancer.

17 Q. Well putting aside the public health authorities  
18 for a moment, you would agree, wouldn't you, that it  
19 would be fair that if B.A.T. Industries believes that  
20 it's reasonable to deny that it has been  
21 scientifically established that cigarette smoking  
22 causes cancer, that it would similarly be reasonable  
23 for a smoker to believe that?

24 MR. SHEFFLER: Objection to the form of the  
25 question. Objection, asked and answered.

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1 A. And -- and yet again you can't put aside what  
2 the public health authorities said because I think  
3 that's the way most people would -- would -- would  
4 take their views. There would be very few people in  
5 the general population looking at the scientific  
6 matters related. What they would do is listen to the  
7 general information that they receive and make their  
8 judgments upon that.

9 Q. Well, sir, have you seen surveys that were --  
10 have been done by the tobacco industry on whether or  
11 not smokers are informed about these scientific  
12 facts?

13 MR. SHEFFLER: Objection to the form,  
14 assumes facts not in evidence.

15 A. I've seen surveys from, for example, the United  
16 States Surgeon General years back which -- which have  
17 said that most people in the United States obviously  
18 because it's U.S. Surgeon General believe that  
19 smoking is a cause of lung cancer, presumably because  
20 of what they've heard from the public health  
21 authorities.

22 Q. Move to strike as nonresponsive. Sir, my  
23 question didn't have anything to do with public  
24 health authorities.

25 My question is this: Have you seen surveys done

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1 by the tobacco industry on whether or not smokers are  
2 informed about the scientific facts concerning  
3 smoking and -- and health?

4 MR. SHEFFLER: Objection, asked and  
5 answered.

6 A. And the response is that no, I haven't, but  
7 there's no need for those since, I mean, it's been  
8 clear -- and again I respond by looking at the U.S.  
9 Surgeon General's report that, I mean, in surveys  
10 undertaken by -- by people in the academic community,  
11 it's pretty clear that people are aware of the views  
12 promoted by the public health authorities.

13 Q. Sir, isn't it a fact that the tobacco industry  
14 itself has done public surveys that showed that  
15 cigarette smokers were not fully informed and well  
16 aware?

17 MR. SHEFFLER: Objection, overbroad.  
18 Objection, assumes facts not in evidence.

19 A. I'm sorry, could you repeat the question.

20 Q. Certainly. Isn't it a fact that the tobacco  
21 industry itself has done public surveys that showed  
22 that cigarette smokers were not fully informed about  
23 the association between smoking and disease?

24 MR. SHEFFLER: Same objections.

25 A. I haven't seen such surveys, but what I have

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1 seen is clearly what -- what is out in the public  
2 domain coming from the public health authorities. I  
3 would be surprised if there were to be such surveys  
4 that they would give any different findings from  
5 those, for example, undertaken by the U.S. Surgeon  
6 General.

7 Q. Well isn't it a fact, sir, that a survey done by  
8 the tobacco industry itself showed smokers were not  
9 fully informed about the association between smoking  
10 and disease and that the results of that study were  
11 actually destroyed?

12 MR. SHEFFLER: Objection, assumes facts not  
13 in evidence, mischaracterizes the testimony of the  
14 witness, objection to the form.

15 A. I'm absolutely unaware of such a study and, you  
16 know, so it would be pure speculation as -- as to  
17 your question. I mean, my view is that from what  
18 I've seen from the scientific literature and from  
19 public health authorities, it is clear and has been  
20 for many years that -- that people are aware of what  
21 people say, what the public health authorities say  
22 on -- on the issue of smoking and health.

23 MS. WIVELL: I would just like the record  
24 to reflect that at this point I would like to  
25 cross-examine the witness with a document that the

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1 defendants have claimed as work product or privileged  
2 in the Minnesota litigation, but which was disclosed  
3 in the Florida litigation and which is available on  
4 the Internet, but because of our agreement and  
5 directions from the court, I am not able to use that  
6 document which directly impeaches this witness's  
7 testimony. And so I'm going to make that statement  
8 for the record and then hope that we will have the  
9 document so that it can be read in at this point if  
10 this testimony is ever played to the jury.

11 MR. SHEFFLER: I object to the -- I object  
12 to the statement by counsel. I further object that  
13 there is no grounds for impeachment. The witness has  
14 testified repeatedly he's -- he's aware of no such  
15 study which counsel claims exists, and there is no  
16 grounds for any such impeachment.

17 BY MS. WIVELL:

18 Q. Sir, isn't it reasonable -- I'm sorry, strike  
19 that.

20 Now B.A.T. Industries has also denied in these  
21 Requests for Admissions that smoking causes heart  
22 disease. Isn't it -- or wouldn't it be fair for  
23 smokers to believe that it has not been  
24 scientifically established that cigarette smoking  
25 causes heart disease as B.A.T. Industries says in

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1 Exhibit 590?

2 MR. SHEFFLER: Objection to the form.

3 A. I think in terms of the real world, that's not a  
4 fair assumption. I would believe that again most  
5 adults -- well most people would be aware of what  
6 public health authorities have said in relation to  
7 heart disease, and I think it's -- it's generally  
8 known what -- where public authorities come out on  
9 heart disease, that there's a variety in their belief  
10 of causes, including smoking, but also a variety of  
11 other factors too.

12 Q. Now, sir, you would agree that tobacco is a  
13 legal product to sell, isn't it?

14 A. As far as I know, in every country in the world,  
15 as cigarettes are legal, and therefore I guess  
16 tobacco is legal.

17 Q. All right. Well you would also agree that it is  
18 improper to sell a legal product through illegal  
19 means, wouldn't you?

20 MR. SHEFFLER: Object to the form as  
21 overbroad.

22 A. I mean, I'm not sure what you mean by "illegal  
23 means," but presumably whatever the laws are in a  
24 particular country, you would sell by them. I'm not  
25 sure I'm --

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1 Q. All right.

2 A. -- I'm answering your question because I'm not  
3 sure I understand the question.

4 Q. Well let me try and help you a little bit here.

5 It's illegal in the state of Minnesota, it's a  
6 violation of the Consumer Protection Statute, to use  
7 misstatements to sell a product. Now if that's the  
8 case, it would be improper to use misstatements to  
9 sell cigarettes, wouldn't it?

10 MR. SHEFFLER: Objection.

11 A. I mean, I don't know the Minnesota -- Minnesota  
12 law. I would have thought, I mean, generally, I  
13 mean, any statements shouldn't be misstatements,  
14 whatever the matter is.

15 Q. Okay. It would be improper if any of the B.A.T.  
16 Group companies made untrue statements in selling  
17 cigarettes to smokers, wouldn't it?

18 MR. SHEFFLER: Objection, asked and  
19 answered.

20 A. I mean, again I'm not sure what the question  
21 refers to, but, I mean, as I said previously, I would  
22 not expect and it's a view of British-American  
23 Tobacco that there should be not -- there should not  
24 be misstatements made.

25 Q. All right. And it would be improper if there

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1 were misstatements, wouldn't it?

2 MR. SHEFFLER: Objection to the form, asked  
3 and answered.

4 A. Again, I mean, I have -- I would need to have a  
5 bit more information to respond more specifically to  
6 your question. If it's a generic that  
7 British-American Tobacco and -- and any other company  
8 should speak as accurately as possible, the answer is  
9 yes.

10 Q. Okay. Well isn't it true that the B.A.T. Group  
11 decided it would try and influence medical and  
12 scientific attitudes and opinions regarding smoking  
13 and health?

14 A. I think on several of the documents you showed  
15 me this morning give that sort of suggestion. In  
16 reality, if you look through the history of -- of  
17 British-American Tobacco, what you'll find is that  
18 what the company has done is worked in cooperation  
19 with governments, and certainly in terms of the  
20 public views in relation to smoking and health, what  
21 you'll find is -- is clearly the predominant view  
22 that people take is that of the public health  
23 authorities. And I see that British-American  
24 Tobacco's action over the many years has been  
25 responsible in those matters.

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1 Q. Well, move to strike as nonresponsive.

2 Sir, my question is simply this: Didn't B.A.T.  
3 Industries decide that it was -- it would try and  
4 influence medical and scientific attitudes and  
5 opinions regarding smoking and health?

6 MR. SHEFFLER: The precise question was  
7 asked and answered.

8 A. British-American Tobacco has worked with  
9 governments and medical bodies and academic  
10 researchers for many years in terms of trying to  
11 understand things in relation to smoking and health.  
12 If you are saying has British-American Tobacco gone  
13 forward and try and convince someone of -- of an  
14 opinion which is not their own, the answer is no, but  
15 I think that what you'll see from what  
16 British-American Tobacco has done is work very much  
17 in collaboration. I mean, perhaps the best example  
18 is in -- in the U.K. where we have decades of  
19 collaboration with the government working towards  
20 product modifications.

21 Q. Sir, I'm going to move to strike as  
22 nonresponsive again.

23 Isn't it a fact that B.A.T. Industries tried not  
24 just to work with the governmental authorities, but  
25 to influence medical and scientific attitudes and

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1 opinions?

2 MR. SHEFFLER: Object to the form of the  
3 question, asked and answered. Object to -- well  
4 object to the form of the question, asked and  
5 answered.

6 A. And -- and again, as far as I know, knowing what  
7 the facts are, if you look at the views of public  
8 health authorities and medical authorities, their --  
9 their views are -- are very clear. They've given  
10 those statements very clearly, and so even  
11 hypothetically, if your question were to be accurate,  
12 it clearly has not been the case that public health  
13 authorities have -- have given any other view to the  
14 public other than the ones that are very well known.

15 Q. Well, sir, isn't it a fact, contrary to your  
16 testimony, that B.A.T. directed its companies to go  
17 out and seek prospects for product reassurance and  
18 marketing throughout the world?

19 MR. SHEFFLER: Object to the form of the  
20 question, overbroad.

21 A. No. I think what British-American Tobacco has  
22 done -- and it's clear from some of the documents we  
23 saw this morning -- is to have a philosophy whereby  
24 we should work with governments. We don't make  
25 health claims about products, but -- but clearly

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1 public health authorities may well do so. And again,  
2 for example, in the United Kingdom, we have decades  
3 of research where we worked with the government and  
4 the public health authorities there looking at  
5 product modifications which may be deemed by the  
6 public health authorities as being beneficial.

7 Q. So it's your testimony that B.A.T. never went  
8 out and tried to reinsure -- reassure smokers about  
9 their -- their smoking habits?

10 MR. SHEFFLER: Objection as to the form of  
11 the question, overbroad.

12 A. It's my testimony that I -- I see no evidence  
13 that British-American Tobacco has significantly  
14 reassured any smokers and that the predominance of  
15 information in -- predominance of information that  
16 people take as to whether they choose to smoke or not  
17 comes from the public health authorities.

18 Q. Sir, isn't it a fact that from the chairman of  
19 B.A.T. Industries down there was a policy to reassure  
20 smokers about their habit?

21 MR. SHEFFLER: Objection to the form of the  
22 question, asked and answered.

23 A. Well the fact is no, and I can certainly go  
24 particularly into my own experience that when I speak  
25 in public in relation to these matters, I speak

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1 accurately, and -- and certainly my impression is  
2 that in terms of the general public, the public's  
3 views are formed from what they hear from the public  
4 health authorities.

5 (Plaintiffs' Exhibit 591 was marked  
6 for identification.)

7 THE WITNESS: Thanks.

8 BY MS. WIVELL:

9 Q. Sir, showing you what's been marked as  
10 Plaintiffs' Exhibit 591, this is a document Bates  
11 numbered 100427791; right?

12 A. That's correct.

13 Q. And if you look at the first page, it is from

14 P. L. Short; right?

15 A. Yeah, it's a letter from P. L. Short. I'm not  
16 sure quite who it's to.

17 Q. It says "The agreements reached at the first and  
18 second Conferences on Marketing in the 1980's, held  
19 in October 1976 and March 1977, have been approved by  
20 Mr. Sheehy"; correct?

21 A. That's what it says.

22 Q. All right. Mr. Sheehy was the chairman at the  
23 time of B.A.T. Industries P.L.C., wasn't he, sir?

24 A. I'm not certain whether as to that date  
25 Mr. Sheehy was the chairman of B.A.T. Industries. I

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1 know at some stage he certainly was. I'm not  
2 familiar --

3 Q. He --

4 A. -- whether at that date whether he was or not.

5 Q. He was the chair for a time period that spanned  
6 two decades, didn't he -- wasn't he?

7 A. The chairman of --

8 MR. FRANKEL: Object to the form.

9 A. -- B.A.T. Industries, I'm -- I'm really not  
10 certain of those facts.

11 Q. All right. Well, sir, it attaches a copy of a  
12 document that had been approved by Mr. Sheehy,  
13 doesn't it?

14 A. I'll have to look at the document. May I have a  
15 little bit of time just to read through it?

16 Q. Well I'm going to direct you to a few pages, but  
17 it says in the second sentence of the first paragraph  
18 of the first page "I enclose a copy for you, dated  
19 14.4.77"; right?

20 A. It certainly says "I enclose a copy for you,  
21 dated 14.4.77."

22 Q. All right. And if you turn to the last page of  
23 Exhibit 591, you see that the date of the attachment  
24 is April 14th, 1977; right?

25 A. Yeah, there's a date at the bottom of this

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1 document that says "14th April 1977."

2 Q. All right. Sir, would you turn to the first  
3 page of the attachment. That is entitled "SMOKING &  
4 HEALTH ITEM 7 : THE EFFECT ON MARKETING"; correct?

5 A. Yeah, it says "SMOKING & HEALTH ITEM 7 : THE  
6 EFFECT ON MARKETING."

7 Q. And if you go down to the third paragraph, there  
8 is a heading entitled "Future Prospects"; right?

9 A. Yeah, it's noted "(1) Future Prospects."

10 Q. Then it says at the end of that paragraph "This  
11 means ... B.A.T. will not remain on the defensive, by  
12 simply reacting to alleged," quote, "'health,'"  
13 quote, "hazards and related competitive challenges:  
14 instead, we" will -- "we shall actively seek out all  
15 worthwhile prospects for brand and product  
16 reassurance in marketing throughout the world";  
17 correct?

18 A. That's what it says in this document.

19 Q. All right. Would you please turn to the page  
20 that ends with Bates number 799.

21 A. Uh-huh.

22 Q. And there do you see the heading "TACTICS"?

23 A. Yeah, it's noted "B. TACTICS."

24 Q. And then it says "The main objective for all  
25 tactics on publicity is directed towards achieving

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1 reassurance" among -- "amongst a variety of," quote,  
2 "'publics,'" quote, "including smokers particularly,  
3 in the face of the increasing social unacceptability  
4 of smoking." Did I read it correctly?

5 A. Yeah, you --

6 Q. And --

7 A. -- read that correctly.

8 Q. And "reassurance" is underlined in that  
9 paragraph; isn't that true?

10 A. It is on this copy of the document, yeah.

11 Q. Yeah. And as a matter of fact, it talks about  
12 reassuring smokers in the face of controversy  
13 concerning cigarettes; right?

14 MR. SHEFFLER: I object to that question.  
15 If counsel's going to ask for the witness to  
16 interpret the document, he has asked for a chance to  
17 read it. If you want to read him things and ask if  
18 you read correctly, that's -- I have no objection to  
19 that, but if you're going to ask him to interpret  
20 what's said, then you should at least give him the  
21 opportunity to read it, as he's requested.

22 Q. Well, sir, isn't it a fact that the B.A.T.  
23 Group's objective as far as public communication was  
24 to reassure smokers about cigarettes and their  
25 smoking habits?

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1 MR. SHEFFLER: Are you asking him with  
2 respect to this document or are you asking for his  
3 opinions? I object to the form of the question.  
4 It's ambiguous.

5 A. I mean, I can answer that as a matter of what my  
6 view is of what British-American Tobacco have done.  
7 If -- if the specifics relate to this document, I do  
8 need to read that to give you a view.

9 Q. Well, sir, could you turn to the top of the  
10 third page -- I'm sorry, top of the fourth page of  
11 the document, which starts with the number three.

12 A. Yes.

13 Q. There it says "Communication," doesn't it?

14 A. Yes, it says "(b) Communication."

15 Q. And it says "All work in this area should be  
16 directed towards providing consumer reassurance about  
17 cigarettes and the smoking habit"; right?

18 A. That's what it says there.

19 Q. And then it goes on to talk about ways in which  
20 this consumer reassurance about cigarettes and  
21 smoking can be done; right?

22 MR. SHEFFLER: Objection. Again, if you  
23 want -- if you're going to ask him to interpret the  
24 document, then you should give him the opportunity to  
25 read it, as he's requested. If you're going to read

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1 to him and ask him if you've read correctly, I have  
2 no objection to that, but if you want him to give an  
3 interpretation of what's in the document, he should  
4 be entitled to read it.

5 A. And -- and again my views are, I mean, I can  
6 read bits out of this document. I don't know exactly  
7 what this document is. It's from a -- a Mr. P. L.  
8 Short and --

9 Q. Well you --

10 A. -- I'm not sure it's -- who it's to. I can give  
11 you a view as to what I believe British-American  
12 Tobacco's position has been for many years and -- and  
13 I can give you a view that it is not my belief that  
14 the company has given reassurance to -- to smokers in  
15 any shape or form. And it's my belief that people in  
16 the general public have been influenced by what the  
17 public health authorities have said.

18 I can -- I would be more than happy to try and  
19 help you on this document, but I -- I really would  
20 need the opportunity to read this document.

21 Q. Well P. L. Short was the BATCO marketing manager  
22 for a number of years, wasn't he?

23 A. I don't know whether that's the case or not.

24 Q. All right. You just don't know as you sit here  
25 one way or the other, do you?

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1 A. That's what I said.

2 Q. All right. Now, this document at the top of the  
3 page we were just looking at goes on to talk about  
4 methods by which smokers can be reassured; isn't that  
5 true, sir?

6 MR. SHEFFLER: I --

7 Q. Why don't you take a moment and read the  
8 paragraph.

9 MR. SHEFFLER: Well I -- I object. If  
10 the -- if -- excuse me, Counselor, but if the witness  
11 needs to review more than a paragraph to answer your  
12 question, then he's entitled to do that.

13 Q. Go ahead, you can read the paragraph.

14 A. Well I can read you the paragraph. I'm not sure  
15 I'm going to be able to help you very much in terms  
16 of, I mean, giving you a proper interpretation of --  
17 of how this paragraph sits within what I believe  
18 is -- is -- is the actions of British-American  
19 Tobacco over the years. If you wish, I can certainly  
20 read this, but I'm not sure it's going to help you  
21 particularly in terms of a helpful answer.

22 Q. Well the rest of this paragraph from this  
23 document entitled "SMOKING & HEALTH ITEM 7 : THE  
24 EFFECT OF MARKETING" goes on to say "This can be  
25 provided in different ways, e.g. by claimed low

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1 deliveries, by the perception of low deliveries and  
2 by the perception of 'mildness.'" Have I read that  
3 correctly so far?

4 MR. SHEFFLER: Let the record reflect that  
5 "mildness" is in quotes.

6 A. Other than that, yes, you've read it correctly.

7 Q. Sir, and isn't it a fact that

8 British-American -- I'm sorry, strike that.

9 Isn't it a fact that the B.A.T. Group did  
10 attempt to reassure smokers by claiming low  
11 deliveries of cigarettes?

12 MR. SHEFFLER: Objection to the form.

13 A. I'm not sure I understand the question. What --  
14 what has clearly happened is that in -- in various  
15 places public health authorities have given public  
16 views in relation to lower-tar products. That's most  
17 clearly what has happened in the United Kingdom where  
18 working with that government British-American Tobacco  
19 has looked at product modifications. It's very clear  
20 that the Independent Committee on -- Scientific  
21 Committee on Smoking and Health, who has worked with  
22 the industry for some time, has taken views as to  
23 what low-tar products may mean for people who choose  
24 to smoke.

25 I think those views have been given over

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1 particularly to the U.K. population from the public  
2 health authorities, and my guess is there is a -- a  
3 public belief that a lower-tar product may be  
4 better. British-American Tobacco does not make  
5 health claims. British Tobacco -- American Tobacco  
6 simply, I mean, couldn't provide that health  
7 reassurance without the support of public health  
8 authorities.

9 Q. Move to strike as nonresponsive.

10 Sir, isn't it a fact that the B.A.T. Group did  
11 attempt to reassure smokers by claiming low  
12 deliveries of cigarettes?

13 MR. SHEFFLER: Objection. That precise  
14 question was asked and answered.

15 A. And my answer again is that what has clearly  
16 happened is that some governments have required, for  
17 example, the -- the publication of -- of tar tables.  
18 In the United Kingdom, British-American Tobacco has  
19 worked with the government for some years. It has  
20 been the view of the Independent Scientific Committee  
21 on Smoking and Health that lower-tar products may  
22 provide benefits to smokers. It is their view that  
23 has prevailed in the public opinion.

24 British-American Tobacco does not make health  
25 claims, and the fact that we under government

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1 regulations put either tar or nicotine yields either,  
2 depending on where you are, on packages or on  
3 advertising doesn't mean to say that we're having any  
4 view at all on that. What is the prevalent view is  
5 that given by public health authorities.

6 Q. Well according to this document which was  
7 approved by Mr. Sheehy, the next sentence says  
8 "Furthermore, advertising for low delivery or  
9 traditional brands should be constructed in ways so  
10 as not to provoke anxiety about health, but to  
11 alleviate it, and enable the smoker to feel assured  
12 about the habit and confident in maintaining it over  
13 time"; isn't that true, sir?

14 MR. SHEFFLER: Objection. If -- if you're  
15 asking him isn't it true that you read it correctly,  
16 I have no objection. If you want him to interpret  
17 the statement, then the witness has asked to read the  
18 entire document and should be given that -- should be  
19 given that opportunity.

20 A. And again, I mean, in terms of an answer, what  
21 you read is -- is -- is what is in this document, and  
22 I -- I mean, I can speak to what actions have  
23 happened within British-American Tobacco, but in  
24 terms of -- of interpreting that sentence in this  
25 particular document, no, I really can't help.

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1 Q. All right, sir. This document discusses the  
2 organization and tactics as related to public  
3 reassurance concerning the smoking and health at the  
4 next page, doesn't it, sir?

5 A. I'll have to turn over.

6 MR. SHEFFLER: Again I object unless you're  
7 asking him to read a specific sentence and asking  
8 if -- if you're asking him to interpret it, then he  
9 should be given the privilege of reading the  
10 document.

11 MS. WIVELL: Well, sir, you have given him  
12 the privilege of reading the document and apparently  
13 you didn't take it.

14 MR. SHEFFLER: Well is this one of the 500  
15 you've designated?

16 MS. WIVELL: This was one of the designated  
17 documents, sir.

18 MR. SHEFFLER: Well we -- we had no  
19 opportunity to let Dr. Proctor read 500 documents  
20 comprising almost 6,000 pages in the brief time that  
21 we've had since you designated this document.

22 MS. WIVELL: No, you took no opportunity to  
23 show it to him.

24 BY MS. WIVELL:

25 Q. Sir, were you shown this document before the

1 deposition today?

2 A. I'm not familiar with this document.

3 Q. Okay. But just so we're clear here, there is a  
4 heading entitled "Organisation & Tactics as Related  
5 to Public Reassurance Concerning the Smoking Habit"  
6 found at the page that ends with Bates number 795;  
7 right?

8 A. It says on -- on that page item (4) or (4) in  
9 parentheses, "Organisation & Tactics as Related to  
10 Public Reassurance Concerning the Smoking Habit," and  
11 then it says "A. ORGANISATION."

12 Q. And under that "ORGANISATION" it says "It became  
13 increasingly obvious in conferences and discussions  
14 from October until March that as smoking and health  
15 is the major issue, companies must be properly  
16 staffed to deal with ... all relevant functions";  
17 right?

18 A. It says "to deal with it in all relevant  
19 functions," but otherwise that's what it says in this  
20 document.

21 Q. And as a matter of fact, the position which you  
22 hold today is one of the things that is advocated as  
23 one of those tactics for public health reassurance in  
24 this document, isn't it, sir?

25 MR. SHEFFLER: Objection to the form.

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1 A. I mean, again I would have to read this  
2 document. I can tell you and -- and help you in --  
3 in respect to what British-American Tobacco's view is  
4 in relation to where people get their information in  
5 regards to smoking and health. I can't give you a  
6 precise answer to that question unless you give me  
7 the opportunity to read this document.

8 Q. Well, sir, isn't it a fact that your job,  
9 amongst others, is to defend the industry and to  
10 provide public relations for the company?

11 MR. SHEFFLER: Objection as a total  
12 mischaracterization of the witness's testimony.

13 A. No, absolutely not. What I tried to describe  
14 right at the beginning of these proceedings is what  
15 my role is, and my role has several aspects, but  
16 primarily it's to ensure that the company speaks with  
17 accuracy in relation to the -- the science and  
18 smoking and health. My other role is to ensure that  
19 we are funding significant independent research in  
20 relation to try and understand biological mechanisms  
21 related to smoking and health.

22 Q. And you also respond to queries from the press;  
23 right?

24 A. On occasions, if -- if there is an inquiry from  
25 the media, I will give a response to that.

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1 Q. And isn't it a fact that this document at the  
2 next page talks about every one of the associated  
3 companies having a person like yourself whose job  
4 should be centered on consumer affairs, providing  
5 strategies and the capability of acting quickly in  
6 order to sustain consumer reassurance and defend the  
7 industry position at governmental, regional and local  
8 council levels?

9 MR. SHEFFLER: Objection to the question.  
10 Objection to the form of the question and objection  
11 to taking a -- a section out of context of a document  
12 without giving the witness an opportunity to read  
13 it.

14 A. I mean, my response is that again you've read  
15 one part of this document. What I can -- I can  
16 respond in general terms, not as -- as it relates to  
17 this document. In general terms and what has clearly  
18 happened around the world is that the views of the  
19 public health authorities have been dominant in terms  
20 of people's opinion as to whether to choose to smoke  
21 or not.

22 Q. I'm sorry, sir, did you understand that I asked  
23 you about the public health authorities? Did you  
24 hear those -- me ask you, use those words?

25 MR. SHEFFLER: Objection, argumentative.

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1 The witness can respond to your question in a way  
2 that's proper as -- as the question called.

3 A. I did not hear you say "public health authority"  
4 in your question; however, in reality one has to  
5 consider for any person exactly where they would get  
6 information, and we're discussing here a -- a  
7 document which hypothesized perhaps something in  
8 terms of con -- con -- consumer reassurance. What  
9 I'm telling you is it's my view that British-American  
10 Tobacco has acted responsibly in this matter and it  
11 is my view and British-American Tobacco's view that  
12 the public's opinions in relation to smoking and  
13 health are entirely dominated by what they have heard  
14 from the public health authorities.

15 Q. Move to strike as nonresponsive.

16 Sir, did you receive training in communications  
17 and -- and how to give interviews?

18 A. No.

19 Q. You haven't, none at all?

20 A. No.

21 Q. Okay. Were you trained in how to communicate  
22 with the television personnel?

23 A. How to communicate with television personnel?

24 Q. Yes, speak in sound bites.

25 A. No.

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1 Q. Did you receive training on spin control?

2 MR. SHEFFLER: Object to the form.

3 A. I'm not sure what spin control is. If -- if you  
4 mean --

5 MR. SHEFFLER: It's an American term.

6 A. And I think I kind of understand in terms of --  
7 of the term "spin doctors." If the question is have  
8 I been trained in any way to try and provide  
9 information to the media or to any other person in a  
10 form which -- which tries to mislead, the answer is  
11 absolutely not. I mean, what I am is -- is a  
12 scientist, and what I have done through practice is  
13 try and define ways to communicate complex scientific  
14 matters in layperson's language. But have I been  
15 educated to communicate? No, I have not.

16 Q. All right. Sir, could you turn to the last page  
17 of Exhibit 591. There do you see the sentence that  
18 begins "Finally, in order to communicate  
19 well-attested and," quote, "'proven,'" quote,  
20 "benefits of smoking, the most promising vehicles  
21 appear to be," and then there's a list?

22 A. It says "Finally, in order to communicate  
23 well-attested and 'proven' benefits of smoking, the  
24 most promising vehicles appear to be: Reputable  
25 research journals," et cetera, yeah.

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1 Q. All right. Why don't you read the et cetera.

2 A. It says "Public relations releases to the media  
3 and specific identified groups or opinion leaders;  
4 Symposia/lectures; or, to the smoker direct, via:-  
5 pack and outer inserts; leaflets."

6 Q. Sir, those are all methods that the B.A.T. Group  
7 companies have used to communicate their stance on  
8 public -- their stance on smoking-and-health issues;  
9 isn't that true?

10 MR. SHEFFLER: Object to the form.

11 A. I mean, let me consider that a bit because  
12 there's a whole broad arena of communications here.  
13 Have there been publications in reputable research  
14 journals? Well yes. For example, I was published in  
15 the -- the medical journal "The Lancet" quite  
16 recently giving my view in relation to the tobacco  
17 industry or more specifically British-American  
18 Tobacco's funding of academic research, and that was  
19 clearly published.

20 Public relations releases to the media, clearly  
21 there are releases to the media on a variety of  
22 issues. Very few of those, I would imagine, have  
23 related to the issue of smoking and health. Most, by  
24 far the majority, I would have thought of public  
25 relations releases to the media would relate to -- to

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1 business matters.

2 And it says "specific identified groups or  
3 opinion leaders." I mean, I'm not quite sure what  
4 that means. I mean, clearly on occasions people  
5 within the company talk to people who may be  
6 described as opinion leaders. And have we presented  
7 at symposia and lectures? The answer is yes. I  
8 mean, I have given quite a few presentations to  
9 scientific symposia on the matter of environmental  
10 tobacco smoke, for example.

11 Or to the smoker directly via pack and outer  
12 inserts, if the -- the whole of this issue is related  
13 to "proven," as it says this in quotes, benefits of  
14 smoking and health, I am not aware of any pack or  
15 outer insert which -- which has attempted to  
16 communicate in relation to -- to what is here quoted  
17 as proven benefits of smoking, nor am I aware of any  
18 direct leaflets to smokers which -- which talk about  
19 proven benefits of smoking coming from  
20 British-American Tobacco.

21 And again back in the -- in the first three, if  
22 the question's relating to the first part about  
23 proven benefits, I mean, I don't think that any of my  
24 work or the work of others in terms of presenting to  
25 scientific fora have been discussing -- have been

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1 focused upon proven benefits of smoking. What we've  
2 been doing is making a -- a contribution as is right  
3 to the scientific knowledge on a variety of issues  
4 related to smoking and health.

5 Q. Now, sir, when these public relations releases  
6 that are referred to here were made to the press, the  
7 B.A.T. Group expected or in -- I'm sorry, intended  
8 that the statements that were made in there would be  
9 read; correct?

10 MR. SHEFFLER: Object to the form.

11 A. I mean, it's a bit of a hypothetical. As I  
12 said, I -- I don't -- I have no knowledge -- I have  
13 no knowledge of any specific situation where a public  
14 relations release -- and I assume that means a press  
15 release of some kind -- has gone from  
16 British-American Tobacco to, as it states before,  
17 communicate proven benefits of smoking. So, I mean,  
18 it's a bit of a hypothetical.

19 Q. Well, sir, from time to time members of B.A.T.  
20 Group companies have been asked their opinion about  
21 the relationship of smoking to the issues of whether  
22 smoking causes diseases. You're aware of that,  
23 aren't you?

24 A. I'm aware that from time to time people have  
25 certainly been asked their opinion. That is

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1 certainly quite a different situation from issuing a  
2 press release, but yes, I'm sure people have -- have  
3 made inquiries of us from a variety of different  
4 places in relation to issues related to smoking and  
5 health.

6 Q. And when the B.A.T. Group members responded to  
7 those inquiries, it was intended that the people  
8 would be able to rely on what the B.A.T. Group was  
9 saying; right?

10 MR. SHEFFLER: Objection. This has been  
11 asked and answered repeatedly.

12 MR. FRANKEL: And object to form.

13 A. And we covered this a little this morning. I'll  
14 try and respond again. When British-American Tobacco  
15 makes a statement in any forum, whether that be to  
16 yourself, whether that be to a journalist or -- or  
17 anywhere, I would hope that the information that is  
18 given is as -- as accurate as it can be.

19 Q. And in fact, the people who then hear what any  
20 of the B.A.T. Group company members have to say would  
21 have a right to -- to rely on what they heard,  
22 wouldn't they?

23 MR. SHEFFLER: Objection to the form,  
24 overbroad, asked and answered.

25 A. And again, as we discussed this morning, what --

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1 what happens in reality is that anyone that reads,  
2 for example, something that might be a statement from  
3 British-American Tobacco will take notice of that  
4 information in terms of a broad range of information  
5 they receive. And the predominant information on  
6 issues relating to smoking and health, those  
7 certainly come from the public health authorities.

8 Q. Well we looked earlier this morning at a  
9 statement that Mr. Broughton made.

10 A. Uh-huh.

11 Q. Are you suggesting that the public should look  
12 to the public health authorities to determine whether  
13 or not British-American Tobacco -- I'm sorry, whether  
14 B.A.T. Industries covered up evidence that it had in  
15 its files?

16 MR. SHEFFLER: We did look at that  
17 statement and we have gone through this over and over  
18 and over again. This is very repetitive. I object.  
19 Move on, Counselor.

20 A. We did discuss this morning a -- a statement  
21 made by Martin Broughton which appeared in the Wall  
22 Street Journal. That statement I think, if you were  
23 in the general public reading the Wall Street  
24 Journal, would be one of many statements that you  
25 would have read on that particular matter. I think

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1 as a person, one, if they were interested in the  
2 matter, would -- would take note of the various  
3 opinions given.

4 Q. So if the FDA, for example, said that Brown &  
5 Williamson had covered up information about the  
6 addictive nature of smoking and health, that the  
7 public should look to that statement instead of  
8 Martin Broughton's; is that what you're saying?

9 MR. SHEFFLER: Objection. It --  
10 mischaracterization of the testimony. It's -- it's a  
11 hypothetical without foundation.

12 MS. WIVELL: I object to your coaching.

13 MR. SHEFFLER: It's not coaching,  
14 Counselor.

15 MS. WIVELL: All you have --

16 MR. SHEFFLER: It's an objection.

17 MS. WIVELL: -- to do is say "objection."

18 MR. SHEFFLER: I said --

19 MS. WIVELL: That's fine.

20 MR. SHEFFLER: -- "objection" and I said my  
21 grounds and I stated them succinctly, and that's what  
22 I have a right to do.

23 A. My answer is that someone in the general public  
24 may read things that the -- the Food and Drug  
25 Administration say and they may read things that

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1 Martin Broughton says. It's up to them entirely as  
2 to take their own views. I'm not saying that one way  
3 or the other. They may wish to -- to use that as an  
4 accumulation of knowledge and make their own  
5 decisions if they're interested in that matter.

6 Q. So it would be reasonable for a person reading  
7 Martin Broughton's denial of a cover-up of  
8 information in the files of one of the B.A.T. Group  
9 companies to believe that he was speaking the truth,  
10 wouldn't it?

11 MR. SHEFFLER: Objection to the form of the  
12 question, objection to the repetitive nature of  
13 this -- of these questions. It's argumentative.

14 A. My response is that I believe Martin Broughton  
15 was speaking the truth. In terms of what is -- is  
16 taken as an opinion by someone who may be reading the  
17 Wall Street Journal on that day, that again is a  
18 matter that they would decide for themselves on the  
19 basis of a whole set of information they may be  
20 listening to on that, and some of that may include  
21 things that the Food and Drug Administration have  
22 said.

23 Q. Sir, over the years the B.A.T. Group have taken  
24 the position that there is a, quote, unquote,  
25 "controversy" about whether smoking causes disease;

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1 isn't that true?

2 A. I think you'll find in a variety of the  
3 documents you've been -- been showing me that -- that  
4 the statement or the word "controversy" is -- is put  
5 in some of those documents. Now in -- in terms of  
6 again looking at the public and where public take  
7 their views on smoking and health and in terms of the  
8 actions of British-American Tobacco to the public, I  
9 believe the public view will be taken almost, well,  
10 entirely from the public health authorities, and  
11 whatever we have said within internal documents, I  
12 don't think that is -- is reflected in terms of  
13 people's understanding as to whether there's a  
14 controversy or not.

15 I think the word "controversy" in -- in some  
16 instances certainly tries to reflect the notion that  
17 there is still much to be done in terms of  
18 understanding biological mechanisms related to  
19 smoking and health.

20 Q. Move to strike as nonresponsive. Sir, my  
21 question is simple.

22 Isn't it a fact that for decades the B.A.T.  
23 Group companies have taken the position that there is  
24 a, quote, unquote, "controversy" relating to whether  
25 smoking causes disease?

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1 MR. SHEFFLER: I object to counsel's  
2 statements. The -- the witness has answered that  
3 precise question and answered it fully and  
4 completely, and I object to the repetitive nature of  
5 the question.

6 A. And again, I will respond that if you look at  
7 the public environment and people taking views on  
8 smoking and health, predominantly their views will be  
9 taken from the public health authorities. The  
10 term --

11 Q. Sir, I'm not asking you for --

12 MR. SHEFFLER: You cannot interrupt the  
13 witness's --

14 MS. WIVELL: Well I --

15 MR. SHEFFLER: -- answer.

16 MS. WIVELL: -- I am going to interrupt  
17 because he's not being responsive.

18 MR. SHEFFLER: If you want to withdraw your  
19 question, fine, but if you ask the witness a  
20 question, he has the right to complete his answer,  
21 Counselor. Your option is to either move to strike  
22 the answer if you don't like it and think you can get  
23 a better one or if you think it's not responsive, but  
24 you do not have the right to interrupt his answer in  
25 the midst of it.

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1 MS. WIVELL: I'm going to move to strike as  
2 nonresponsive.

3 BY MS. WIVELL:

4 Q. Sir, completely and apart from where you think  
5 the public gets its information from, isn't it true  
6 that for decades the B.A.T. Group companies have  
7 claimed that there was a, quote, unquote,  
8 "controversy" about whether smoking causes disease?

9 MR. SHEFFLER: Objection. I object to the  
10 predicate for your -- of the question, and the  
11 question itself has been asked and answered more than  
12 once, even though you interrupted the last answer  
13 when he was giving it again.

14 A. And again I'm -- I'm -- I'm trying to answer and  
15 be as helpful as possible. I mean, I think if you're  
16 saying "have claimed," there well may be documents  
17 that -- that talk about a scientific controversy.  
18 What my understanding of that is, that it tries to  
19 reflect the fact that once public health authorities  
20 have made their conclusions in relation to the  
21 evidence they have, it is very clear research  
22 continues and in order to try and understand the  
23 biological mechanisms related to lung cancer and  
24 other diseases.

25 THE REPORTER: Off the record, please, to

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1 change tape.

2 (Recess taken.)

3 (Plaintiffs' Exhibit 592 was marked  
4 for identification.)

5 BY MS. WIVELL:

6 Q. Sir, showing you what's been marked as  
7 Exhibit 592, this is a document that begins with  
8 Bates number 109881312; correct?

9 A. Correct.

10 Q. And it's entitled "CHANGE OF STANCE ON SMOKING  
11 AND HEALTH"; right?

12 A. That's what's at the top of the first page,  
13 yeah.

14 Q. It's also at the top of the second page, isn't  
15 it, sir?

16 A. That's correct.

17 Q. And if you look at the top of the second page,  
18 there's also a summary section at the top; right?

19 A. It says "SUMMARY," and I don't know how much of  
20 the document that refers to.

21 Q. All right. It says right under the word  
22 "SUMMARY" "The Board has been considering a change  
23 in its stance on Smoking and Health because some of  
24 our earlier views have been overtaken by events and  
25 are now damaging to our interests"; correct?

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- 1 A. That's what it says.
- 2 Q. And then it goes on to say "We believe a changed  
3 stance will help us take initiatives to improve our  
4 trading position"; right?
- 5 A. Again that's what it says.
- 6 Q. And then there is a suggested new stance in a  
7 question-and-answer form; right?
- 8 A. It says "A Suggested New Stance, QUESTION," and  
9 then "ANSWER," yeah.
- 10 Q. And the question is "Does B.A.T. think smoking  
11 causes diseases such as cancer?" Right?
- 12 A. It says "Does B.A.T. think smoking causes  
13 diseases such as cancer?" Yeah.
- 14 Q. And then the answer is -- or a suggested answer  
15 is given; isn't that true?
- 16 A. There's an answer here on this piece of paper,  
17 yeah.
- 18 Q. And that answer includes the claim that there is  
19 a controversy which exists in the medical and  
20 scientific community as to whether smoking causes  
21 diseases; right?
- 22 A. Well if I read out the whole answer, it says "We  
23 recognize that there is a growing body of responsible  
24 medical/scientific opinion which believes that  
25 smoking," then in parentheses, "(either on its own or



1 in combination with other environmental or genetic  
2 factors)," end of brackets, "can cause or can  
3 contribute to various diseases in a minority of  
4 smokers. These views are shared by a number of  
5 Governments of the countries in which we operate.  
6 However, the medical/scientific view is by no means  
7 unanimous on this issue and, therefore, a genuine  
8 controversy continues. To help resolve this  
9 question, B.A.T. has been carrying out an extensive  
10 scientific research programme for many years.

11 "As a responsible manufacturer we must respect  
12 the views of the medical/scientific fraternity and  
13 Governments, and respond to the consumer demand that  
14 such views have created. We, therefore, consider it  
15 our duty to provide the consumer with the widest  
16 possible range of products so that in light of the  
17 evidence that is freely and widely available, he can  
18 choose how to regulate his smoking habit."

19 Q. All right. Sir, isn't it true that one of the  
20 reasons that this suggested new stance was taken was  
21 because the B.A.T. Group companies felt they must  
22 defend themselves with regard to the attack they felt  
23 they were under?

24 MR. SHEFFLER: Objection, calls for  
25 speculation.

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1 A. No. What I've -- I read out of that answer --  
2 and this document is dated 1980, but it -- it follows  
3 very much along the lines of the practice that  
4 British-American Tobacco had in the U.K. from the  
5 early '70s and in terms of its work with the U.K.  
6 government and the Independent Scientific Committee  
7 on Smoking and Health, looking at ways to make  
8 product modifications in response to -- to their  
9 views. And there's been a whole, I mean, history of  
10 a product modification program working with the U.K.  
11 government in which, as is reflected in this answer,  
12 it is the public health authorities in the U.K. that  
13 have -- have suggested that lower-tar products may be  
14 better for those who choose to smoke.

15 And I think what this answer reflects is simply  
16 what had been going on for some time in terms of  
17 respect for those public health authorities and the  
18 fact that British-American Tobacco as a company  
19 should make a range of products that -- that respond  
20 to the demands of smokers.

21 Q. Sir, could you turn to the second -- or the  
22 third page of the document where it says "THE CURRENT  
23 SITUATION."

24 A. I see that.

25 Q. It says "As we know all too well, the industry

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1 has been under seige for a number of years and the  
2 attack on the industry has strengthened rather than  
3 declined"; right?

4 A. That's correct. That's point one.

5 Q. And then it goes on to say "A number of BAT  
6 companies and the industry generally are taking  
7 action to counter this attack and the results are  
8 encouraging"; right?

9 A. That's point two.

10 Q. And as a matter of fact, right above this note  
11 it says the purpose of it is to summarize the  
12 position and to make a recommendation; correct?

13 A. It says above "THE CURRENT SITUATION" "The  
14 purpose of this note is to summarise the position and  
15 to make a recommendation." It has a point three in  
16 "THE CURRENT SITUATION," which says "A major  
17 difficulty for us is that public and medical opinion  
18 has changed so much in the past twenty years that our  
19 stance on smoking and health - that we are not  
20 doctors and cannot make judgments-is no longer  
21 credible. In fact it is working against us and the  
22 international reputation which is the basis of our  
23 success, is being eroded."

24 Q. And it goes on to state a problem, doesn't it,  
25 sir?

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1 A. The next title in this document, which, I mean,  
2 I guess is a public affairs document, says "THE  
3 PROBLEM."

4 Q. And it says "How can we establish a new stance  
5 which is not legally compromising and which can  
6 provide a springboard for presenting our views  
7 effectively and so ... to create a more favourable  
8 business climate?"

9 A. That's what it says in this document.

10 Q. And, sir, what they're referring to here by a  
11 stance that is not legally compromising is the fact  
12 that there were smoking-and-health-related lawsuits  
13 in the United States which needed to be taken into  
14 account when coming to a new position; isn't that  
15 true?

16 MR. SHEFFLER: Objection, calls for  
17 speculation.

18 A. I mean, that's certainly speculation in terms of  
19 trying to put myself in the mind of the person who  
20 wrote this document. I don't understand at all  
21 from -- from the paragraph that you've just read to  
22 me that that is -- is the case or that the author of  
23 this document had in any -- any sense any  
24 consideration of litigation that might have been  
25 going on in the United States.

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1 MS. WIVELL: Mr. LaBorde, could you get  
2 out -- get out Exhibit 503, please.

3 (Plaintiffs' Exhibit 503 was handed  
4 to the witness.)

5 BY MS. WIVELL:

6 Q. Sir, what's -- showing you what's been  
7 previously marked as Exhibit 503, this is a document  
8 entitled "LEGAL CONSIDERATIONS IN SMOKING AND HEALTH  
9 ISSUES"; right?

10 A. Yeah, the title of this is "LEGAL CONSIDERATIONS  
11 IN SMOKING AND HEALTH ISSUES."

12 Q. And it was sent by P. D. Moore, Assistant  
13 Secretary; correct?

14 A. That's the -- the name at the bottom. It's not  
15 signed, but that's the name that's written at the  
16 bottom of this.

17 Q. And it says in the first paragraph "A note  
18 issued by Mr. H. A. Morini, Legal Director of" -- "of  
19 BATCo, was sent to you in May 1981"; right?

20 A. That's correct. That's what it says.

21 Q. All right. Why don't you read this document to  
22 yourself.

23 A. Thanks.

24 MR. SHEFFLER: Do you mind if I look over  
25 his shoulder?

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1 MS. WIVELL: Not at all.

2 A. Okay, I've read that.

3 Q. Now according to this document, the note which  
4 was circulated initially in 1981 was being  
5 recirculated with this memo; right?

6 A. It says here the note was issued and was sent to  
7 you in May 1981. I don't know what was attached to  
8 this letter. It's -- it's not here, but --

9 Q. Well we know it was entitled "LEGAL  
10 CONSIDERATIONS IN SMOKING AND HEALTH ISSUES"; right?

11 A. Well no. We -- we know that -- that the title  
12 of this letter from P. D. Moore, which isn't signed,  
13 says "LEGAL CONSIDERATIONS IN SMOKING AND HEALTH  
14 ISSUES." I'm not sure I would understand from the  
15 document you've given me that any attached memo was  
16 called that, but, I mean --

17 Q. All right. Well according to this note, what  
18 was sent in 1981 was being recirculated with this  
19 memo; right?

20 A. It says "A note issued ... was sent to you in  
21 May 1981....

22 "Accordingly, the May 1981 note is being  
23 re-circulated under cover of a note," so, I mean, I  
24 assume a note is being recirculated. Whether that's  
25 the same note, I don't know --

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1 Q. All right.

2 A. -- or what that note refers to.

3 Q. Well it did stress the importance of  
4 understanding the legal considerations involved in  
5 smoking-and-health issues having particular regard to  
6 the fate of the Manville Corporation in the USA;  
7 right?

8 A. Again reading from -- from this letter without  
9 its attachment, it says "The issues contained in that  
10 note have now become of crucial importance to the  
11 Group in view of recent developments in the USA of  
12 which you may be aware, concerning the Manville  
13 Corporation."

14 Q. All right. Do you understand what that  
15 reference to the Manville Corporation is?

16 MR. SHEFFLER: Objection, calls for  
17 speculation.

18 A. My answer is no, I do not know what the Manville  
19 Corporation is or was.

20 Q. Did you understand that Man -- the  
21 Johns-Manville Corporation sought bankruptcy  
22 protection as a result of the numerous lawsuits  
23 brought against it by people exposed to asbestos?

24 A. No, I -- I didn't understand that at all.

25 Q. All right. Sir, isn't it a fact that in order

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1 to try and keep the controversy, the -- strike that.

2       Isn't it a fact that in order to try and keep  
3 the claimed, quote, unquote, "controversy" about  
4 cigarette smoking and disease alive, that people  
5 within the B.A.T. Group worked with other members of  
6 the tobacco industry?

7               MR. SHEFFLER: Is that it?

8               MS. WIVELL: Yep.

9               MR. SHEFFLER: Object to the form of the  
10 question, compound. Object to the assumptions in the  
11 question.

12 A. I mean, your question says have British-American  
13 Tobacco, as far as I understand it, worked with other  
14 members of the tobacco industry to keep a controversy  
15 alive. I think my response to that is again, if you  
16 go to the real situation, people's views in relation  
17 to smoking and health have absolutely been  
18 predominantly taken from the views of the public  
19 health authorities. It is the public health  
20 authorities' views that a person takes into account  
21 when they choose whether they wish to smoke or not.

22 Q. Move to strike as nonresponsive.

23       Sir, I'm not talking about the public health  
24 authorities now. I'm asking you isn't it a fact that  
25 in order to try and keep the claimed, quote, unquote,

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1 "controversy" alive, people within the various  
2 B.A.T. Group companies worked with people from other  
3 tobacco companies to keep the controversy alive?

4 MR. SHEFFLER: Objection to the form of the  
5 question, objection to the statements of counsel in  
6 her predicate.

7 A. Your -- your -- your question really takes -- I  
8 mean, there's two steps to your question. The one is  
9 an assumption that British-American Tobacco has in  
10 some state or form kept in the public mind the  
11 scientific controversy alive. My -- my view of that  
12 is that no, it has not; that people's views are taken  
13 predominantly from the public health authorities.  
14 The second part of your question is has  
15 British-American Tobacco, so far as I understand it,  
16 worked with other tobacco companies to that aim. In  
17 that British-American Tobacco, in my view, has not  
18 kept a scientific controversy alive in the view of  
19 the public, then, I mean, the answer to the second  
20 part is obviously no.

21 Q. Well, sir, isn't it a fact that people within  
22 British-American Tobacco Company worked with  
23 representatives of R.J. Reynolds to create papers  
24 that would help keep the controversy alive?

25 MR. SHEFFLER: Objection. Excuse me.

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1 Objection, mischaracterizes the witness's testimony,  
2 and objection to the form of the question.

3 A. Not that I'm aware of. If -- if -- certainly in  
4 my own personal opinion -- I believe this is true  
5 through history -- personally I can never remember a  
6 time where I sat down with anyone from the R.J.  
7 Reynolds Company and wrote a joint document in  
8 relation to my understanding of smoking and health.  
9 I would not do that.

10 What I -- British-American Tobacco takes as its  
11 views on smoking and health is our fundamental  
12 understanding individually of -- of where the science  
13 is. Again your question predicates that the notion  
14 that we have kept a scientific controversy alive. I  
15 think that simply is not real in terms of where the  
16 public understand issues in relation to smoking and  
17 health. I believe their understanding is entirely  
18 predominated by the views of the public health  
19 authorities.

20 Q. Move to strike as nonresponsive.

21 Sir, isn't it a fact that people who were  
22 employees of BATCO even before you became employees  
23 of BATCO worked with representatives from the R.J.  
24 Reynolds Company to help keep the smoking controversy  
25 alive?

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1 MR. SHEFFLER: Objection. It's asked and  
2 answered.

3 A. And again the question assumes that the -- the  
4 smoking-and-health controversy has been kept alive in  
5 any shape or form or -- or there's been actions to  
6 try and help keep that alive. I mean, my view is  
7 again through history that is simply not reflected in  
8 fact, that the fact is that I don't remember an  
9 instance of -- of anything coming from either  
10 British-American Tobacco or any of the other tobacco  
11 companies that has significantly affected what the  
12 public's views are and where they take those views in  
13 terms of smoking and health. I'm convinced that  
14 people take their views in relation to smoking and  
15 health predominantly from the public health  
16 authorities.

17 Q. Well, sir, isn't it a fact that Mr. or Dr. F. G.  
18 Colby of R.J. Reynolds authored a paper that was  
19 submitted to B.A.T. Industries for review -- I'm  
20 sorry, strike that.

21 Isn't it a fact that Dr. F. G. Colby of R.J.  
22 Reynolds authored a paper that was reviewed by BATCO  
23 that addressed the issue of the smoking-and-health  
24 controversy?

25 MR. SHEFFLER: Objection, overbroad.

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1 A. If that were to be the case, I'm not aware of  
2 that instance.

3 (Plaintiffs' Exhibit 593 was marked  
4 for identification.)

5 BY MS. WIVELL:

6 Q. Sir, showing --

7 A. Thanks.

8 Q. -- you what's been marked as Plaintiffs'  
9 Exhibit 593, this is a document from BATCO's files  
10 Bates numbered 100440293; correct?

11 A. Yeah, it's 100440293.

12 Q. All right. And it's entitled "Comments on,"  
13 quote, "'Smoking and Health,'" quote, "paper by  
14 Dr. F.G. Colby"; right?

15 A. That's right, and then it gives a reference to  
16 where that paper presumably was published, which is  
17 the "Tobacco Journal International," I think. It's  
18 "Tob. J. Int.," in 1983, and it gives reference to  
19 the pages of that presumably publication, which is  
20 page 4 -- 243 to 244.

21 Q. All right. Are you --

22 Is it your testimony that this paper was  
23 published?

24 MR. SHEFFLER: Objection. It -- the  
25 document speaks for itself. The citation is

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1 underneath the title, which he's just read into the  
2 record.

3 A. Yeah, my -- my -- my assumption, since it gives  
4 the specific reference to a publication, a date and  
5 the page numbers in that publication, I would assume  
6 that this is a -- a -- a paper that has been  
7 published.

8 Q. Have you read it?

9 A. I certainly can't remember reading it, but then  
10 I've read an awful lot of -- of scientific  
11 publications. I can't remember specifically reading  
12 this one.

13 Q. Now, sir, the first paragraph of this document  
14 begins "The clearly expressed aim of" this "paper is  
15 to establish that a controversy still exists about  
16 the explanation for the statistical association  
17 between smoking and various diseases, thereby  
18 supporting the view prevailing in legal circles  
19 advising the tobacco industry"; correct?

20 A. That's what it says as point one.

21 Q. All right. And did you understand or do you  
22 understand today that it is the prevailing view in  
23 legal circles advising the tobacco industry that it  
24 must be claimed that there is a controversy which  
25 exists?

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1 MR. SHEFFLER: Objection to the form.

2 A. I mean, it's my understanding in -- in -- I  
3 don't know what legal circles advise or not advise,  
4 and it's my understanding that what is dealt with in  
5 relation to smoking and health has to be accurate in  
6 terms of what the science says. And I'm not sure --  
7 I don't think I have ever heard or -- or been  
8 suggested in any shape or form that there is a  
9 requirement that there should be a controversy.

10 I mean, clearly what I would assume would  
11 happen -- and I'm not very familiar with -- with the  
12 litigation, but I assume what would happen is that  
13 there would be a requirement to speak accurately and  
14 forthrightly on what the scientific facts say.

15 Q. Well, sir, this first statement about a  
16 controversy existing parallels the proposed answer  
17 that's suggested in Exhibit 592 on the change of  
18 stance on smoking and health, doesn't it?

19 MR. SHEFFLER: Objection to the form. I'd  
20 also state for the record that this -- what is being  
21 read here as the first statement in this exhibit is a  
22 commentary purportedly on a published work, which has  
23 not been tendered to the witness.

24 A. I mean, you're trying to ask -- you're asking me  
25 to compare two documents, neither of which I've read

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1 in full. I can give you, to try and be helpful, a  
2 view in terms of your questions in -- in relation to  
3 controversy, and my view is that the -- the facts are  
4 that in the public mind people have taken their  
5 information from the public health authorities. And  
6 there clearly is a continued effort within the  
7 academic communities, to which we contribute, to try  
8 and understand biological mechanisms related to  
9 disease.

10 But, I mean, to try and help you further, I  
11 really need to take time reading these two if you  
12 wish me to make a comparison of them.

13 Q. Move to strike as nonresponsive.

14 Sir, the suggested new stance on the  
15 smoking-and-health issue that's listed in 592  
16 suggests that there should be a claim of a  
17 controversy; correct?

18 MR. SHEFFLER: Objection, misstatement.

19 A. I mean, if I read again to try and answer your  
20 question what -- what the suggested new stance is  
21 here, it says "We recognize that there is a growing  
22 body of responsible medical/scientific opinion which  
23 believes that smoking (either on its own or in  
24 combination with other environmental or genetic  
25 factors) can cause or can contribute to various

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1 diseases in a minority of smokers. These views are  
2 shared by a number of Governments of the countries in  
3 which we operate. However, the medical/scientific  
4 view is by no means unanimous on this issue and,  
5 therefore, a genuine controversy continues. To help  
6 resolve this question, B.A.T. has been carrying out  
7 an extensive scientific research programme for many  
8 years.

9 "As a responsible manufacturer we must respect  
10 the views of the medical/scientific fraternity and  
11 Governments, and respond to the consumer demand that  
12 such views have created. We, therefore, consider it  
13 our duty to provide the consumer with the widest  
14 possible range of products so that in the light of  
15 the evidence that is freely and widely available, he  
16 can choose how to regulate his smoking habit."

17 And I think my impression of what this -- this  
18 document says in that answer in terms of your  
19 questions in relation to controversy are really  
20 reflected, as I said before, in the fact there  
21 continues to be a scientific effort to understand the  
22 biological mechanisms, but British-American Tobacco  
23 respects what public health authorities have given as  
24 their view to -- to the public and we also, as is  
25 very clearly stated in this -- what is it? -- 1980

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1 document, it was clearly the case before 1980 and it  
2 was clearly the view in 1980 that we should work in a  
3 responsible fashion with -- with governments and  
4 the -- the medical and scientific fraternity.

5 Q. Sir, isn't it a fact that at the time that this  
6 claim of a genuine medical controversy existing was  
7 written in Exhibit 592 there was little or no  
8 evidence that such a controversy existed?

9 MR. SHEFFLER: Objection, asked and  
10 answered.

11 A. And again, in response to your question, I don't  
12 think it's -- it is fairly representing what the  
13 views were by taking one line out of what is a fairly  
14 long answer on a -- on a -- what is suggested in this  
15 document as a -- a new stance. I think the thrust of  
16 this stance, which is actually borne out in terms of  
17 the behavior in particular in the United Kingdom, is  
18 the fact that British-American Tobacco would be  
19 respectful of -- of public health authorities and  
20 would work with governments in relation to issues on  
21 smoking and health.

22 And it goes on to say that we would provide a  
23 wide range of products in light really of what the  
24 public health authorities were saying, and in the  
25 United Kingdom, I mean, that is clearly -- to try and

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1 put context to this document, this sits right in the  
2 middle of the product modification program and that  
3 is -- is clearly well documented in -- in a variety  
4 of -- of areas, particularly through the writings of  
5 Sir Peter Froggatt, where the industry in the United  
6 Kingdom, including British-American Tobacco, worked  
7 with the government in a whole series of programs to  
8 try and identify product modifications by which the  
9 public health authorities could regard the products  
10 as being safer for the general community.

11 That's a program that -- that went on for many  
12 years, and certainly I think consumers' behavior has  
13 changed in light of what the Independent Scientific  
14 Committee on Smoking and Health and the various  
15 subsequent consequences of that program have --  
16 have -- have given to the public.

17 Q. Move to strike as nonresponsive.

18 Sir, did you understand that I was going to take  
19 the deposition of the public health authorities in  
20 the U.K. today?

21 MR. SHEFFLER: Objection.

22 MR. FRANKEL: Objection.

23 MR. SHEFFLER: That's argumentative. It  
24 doesn't deserve a response. Ask a question.

25 A. No. My understanding is -- is that you have --

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1 I -- I am here to provide you with as much help as I  
2 can in terms of my understanding of -- of the  
3 companies British-American Tobacco and B.A.T.  
4 Industries, both views and actions in relation to  
5 smoking and health, and I think it would be  
6 impossible to try and express those views accurately  
7 without giving reference to the whole environmental  
8 context of that debate.

9 And as we've been discussing specific line items  
10 in some of the documents you've been showing me in  
11 relation to controversy, the fact is in -- in --  
12 in -- in real life in the public arena are people  
13 taking their views from what they've heard  
14 generally. And whether or not some of these  
15 documents suggest controversy or not and what is  
16 meant by some of these documents, the fact is that  
17 people have taken their views from the public health  
18 authorities, and it's -- it's very hard for me to  
19 answer your questions in -- in a proper manner  
20 without making reference to the total situation.

21 Q. Well, sir, let's try and get back to the  
22 question that I asked originally.

23 Isn't it true that at the time that this claim  
24 was made that there was a, quote, "genuine  
25 controversy" which continued, that as a matter of

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1 fact there was little or no evidence for such a  
2 controversy and BATCO knew it?

3 MR. SHEFFLER: Objection to the predicate  
4 statements of counsel. Objection to the form of the  
5 question. Objection, asked and answered.

6 A. And again I will respond that it is my reading  
7 of this that it is clear certainly in 1980 and it  
8 continues in 1997 that there was still a tremendous  
9 amount of effort going on within the academic  
10 community to identify biological mechanisms which may  
11 be related to diseases such as lung cancer. And I  
12 suspect that is what that controversy refers to.

13 I don't know whether "controversy" is -- is the  
14 best word to describe that, but it's a clear fact  
15 there is research efforts going on in -- in -- in the  
16 academic environment.

17 Q. Could you please turn to the last page of  
18 Exhibit 593.

19 A. Sorry, 593. Yeah.

20 Q. And there it says, quote, "To persist in  
21 stressing controversy, where little or no evidence  
22 for such controversy is seen to exist, can only  
23 result in a complete loss of credibility"; isn't that  
24 true, sir?

25 MR. SHEFFLER: Objection to the form of the

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1 question. As -- as this document, 593, is a -- is  
2 a -- is a wholly different document than what we were  
3 talking about before, there's no definition provided  
4 in this portion of what the controversy that was  
5 being referred to since the paper that this is  
6 commenting on has not been provided.

7 A. And again in trying to respond accurately to  
8 your -- your question, I mean, what -- what I have --  
9 and I still haven't had an opportunity to read this  
10 in full -- is a -- a document which says "D.G.  
11 Felton," August 2 or "2 August 1983" at the bottom,  
12 which seems to be a commentary on a -- a published  
13 paper. And, I mean, I really can't get into the mind  
14 of a particular individual commenting on a -- on a  
15 published paper.

16 What I can tell you is that what -- my belief  
17 of -- of the view of what British-American Tobacco  
18 has done --

19 Q. Why don't you answer my question, sir.

20 MR. SHEFFLER: No, no, you cannot do that.

21 Q. My question is --

22 MR. SHEFFLER: I'm sorry, Coun --

23 Q. -- and I quote -- and I'll read it back so you  
24 have it in mind.

25 MR. SHEFFLER: Counselor, you must let the

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1 witness finish his answer. This is not proper  
2 deposition technique. You must let the witness  
3 finish his answer. You cannot interrupt him in the  
4 midst of it, and it was a responsive answer.  
5 Q. Sir, my question is: And there it says, quote,  
6 "To persist in stressing controversy, where little  
7 or no evidence for such controversy is seen to exist,  
8 can only result in ... complete loss of credibility,"  
9 close quote; isn't that true, sir?

10 MR. SHEFFLER: Can you have the first  
11 portion of the answer read back until he was --

12 MS. WIVELL: Well it's nonresponsive and  
13 I'm going to move to strike as nonresponsive.

14 MR. SHEFFLER: You can --

15 MS. WIVELL: Let's see if we can get this  
16 done easily.

17 MR. SHEFFLER: Counselor, I would suggest  
18 if you want to get this done, then you show proper  
19 form and let the witness complete his answer. Now  
20 the witness has started his answer. He's entitled to  
21 complete that answer, and I would like to have the --  
22 the answer that was begun and interrupted by counsel  
23 read back to me, please.

24 MS. WIVELL: Well I'm going to move to  
25 strike it as nonresponsive.

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1 MR. SHEFFLER: You can do that.

2 MS. WIVELL: Let's try it again.

3 MR. SHEFFLER: You can do that, but I'm  
4 still going to have the answer read back as it was  
5 and let the witness finish it. Then you can move to  
6 strike it.

7 (Record read by the court reporter.)

8 MS. WIVELL: Clearly nonresponsive. Let  
9 me --

10 MR. SHEFFLER: Well how can you --

11 MS. WIVELL: -- withdraw the question and I  
12 will start again.

13 MR. SHEFFLER: If you withdraw the  
14 question, that's fine, but, Counselor, you cannot  
15 interrupt the -- the answer and say it's  
16 nonresponsive until you hear the complete answer.

17 MS. WIVELL: Well it hasn't been responsive  
18 so far.

19 BY MS. WIVELL:

20 Q. Sir --

21 MR. SHEFFLER: Well he was -- he wasn't  
22 given an opportunity to finish his answer.

23 Q. Sir, my question is simply this: Does it say  
24 there, quote, "To persist in stressing controversy,  
25 where little or no evidence for such controversy is

1 seen to exist, can only result in a complete loss of  
2 credibility," close quote?

3 MR. FRANKEL: Whether or not that's what  
4 the document says is a completely different question  
5 than what you previously asked.

6 MR. SHEFFLER: She's asking --

7 MS. WIVELL: Nonsense.

8 MR. SHEFFLER: Well, no, she -- she  
9 withdrew her previous question. She's asking him if  
10 it says that. Does it -- does it -- are those words  
11 on that page is the question.

12 MS. WIVELL: That was my question before  
13 too.

14 MR. SHEFFLER: No, it wasn't.

15 MR. FRANKEL: I believe your last question  
16 was is that true.

17 A. The answer's yes.

18 Q. Thank you.

19 MR. SHEFFLER: For this question.

20 Q. Now, sir, wasn't it --

21 Isn't it a fact that there was a -- an agreement  
22 within the tobacco industry that in order to reassure  
23 smokers, that all tobacco companies would claim there  
24 was a, quote, "controversy" when there really wasn't  
25 one?

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1 A. To my knowledge, there's been no agreement  
2 within tobacco companies in relation to -- to claim a  
3 controversy.

4 Q. Isn't it a fact that there was a conspiracy  
5 among the tobacco companies to keep the claimed,  
6 quote, unquote, "controversy" alive when they knew it  
7 didn't exist?

8 MR. SHEFFLER: Again this is all repetitive  
9 and note my objection.

10 A. And my answer to that is I have no knowledge of  
11 a conspiracy to -- to try and -- I'm not sure quite  
12 what -- actually could you repeat the question just  
13 so I can just make my -- my statement accurately.

14 Q. Certainly. Isn't it a fact that there was  
15 contro -- I'm sorry, strike that.

16 Isn't it a fact that there was a conspiracy  
17 among the tobacco companies to keep the claimed,  
18 quote, unquote, "conspiracy" alive when they knew it  
19 didn't even exist?

20 MR. SHEFFLER: Same objections.

21 A. If you meant in the question controversy alive  
22 as opposed to conspiracy alive, my answer to that is  
23 no.

24 Q. Well, sir, isn't it a fact that B.A.T.  
25 Industries representatives met with representatives

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1 of Brown & Williamson to make sure that they were all  
2 stressing the controversy concerning smoking and  
3 health?

4 MR. SHEFFLER: Objection. The question is  
5 vague and overbroad.

6 A. I don't know whether members of B.A.T.  
7 Industries at some stage had meetings with people  
8 from Brown & Williamson to stress the controversy.  
9 What I can tell you again is exactly what has  
10 happened as a matter of fact; that if you look at  
11 the -- the public environment, there is, I don't  
12 think, any notion within the public of a  
13 controversy.

14 MR. SHEFFLER: Marti, if you could just  
15 throw them over a little bit more so that we can  
16 reach them, it would be helpful.

17 (Plaintiffs' Exhibit 594 was marked  
18 for identification.)

19 BY MS. WIVELL:

20 Q. Sir, showing you what's been marked as  
21 Plaintiffs' Exhibit 594, this is a document Bates  
22 numbered 109837925; correct?

23 A. That's correct.

24 MR. SHEFFLER: Excuse me, I need to check  
25 with local counsel before we can use this document.

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1 Off the record for just -- just one second. We can  
2 stay on the record, but I just have to ask a  
3 question.

4 MS. WIVELL: We can go off the record.

5 THE REPORTER: Off the record, please.

6 (Discussion off the record.)

7 MR. SHEFFLER: Let me just state for the  
8 record I -- I believe that this document may contain  
9 a communication that would be a privileged  
10 communication; however, I -- we don't have enough  
11 information at this point in time to -- to make that  
12 final ascertainment, and I will allow questions to be  
13 asked without the subject of any waiver of -- of our  
14 position with respect to whether or not it is in fact  
15 privileged.

16 MS. WIVELL: Well if it's privileged, it  
17 would be on your privilege log, and I don't believe  
18 this document is on your privilege log. Is this  
19 document on your privilege log, sir?

20 MR. SHEFFLER: That's what I was trying to  
21 ascertain, Counselor, and I have not been able to  
22 ascertain that in this brief time.

23 MS. WIVELL: Well this document was  
24 previously disclosed to you in our designation, and I  
25 have not received any notification that it was on

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1 your privilege log. It is not on your privilege log  
2 to -- based on my review of the files, and --

3 MR. SHEFFLER: Listen.

4 MS. WIVELL: -- all documents to which you  
5 claim privilege had to be provided to us no later  
6 than, I believe, the 1st of May of this year and all  
7 documents that were not on the privilege log were  
8 deemed waived as of that point. So I'm going forward  
9 with my examination --

10 MR. SHEFFLER: I haven't --

11 MS. WIVELL: -- with regard to this  
12 document.

13 MR. SHEFFLER: I haven't tried to stop  
14 you. What I'm simply saying is I preserve all rights  
15 with respect to any objections we may have for the  
16 use of this document.

17 BY MS. WIVELL:

18 Q. Sir, Exhibit 594 concerns a meeting that  
19 Dr. Blackman had -- or concerns a visit to Brown &  
20 Williamson in Louisville made by Dr. Blackman in  
21 1984; correct?

22 A. I'm not certain. It's titled "VISIT TO BROWN &  
23 WILLIAMSON, LOUISVILLE," and the author seems to be a  
24 Sue Maylin and then --

25 Q. All right.

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1 A. -- with the letter copied to Mr. Pritchard and  
2 Mr. Blackman, so I'm not certain whether this is  
3 Mr. Blackman's visit or not.

4 Q. Well just so the ladies and gentlemen of the  
5 jury understand, Lionel Blackman was head of research  
6 and development for BATCO at the time that this visit  
7 took place; right?

8 A. The date is February 6, 1994. I believe --

9 MR. SHEFFLER: '84.

10 A. Sorry, '84. I believe that Dr. Blackman was --  
11 was certainly at research in Southampton. I think he  
12 headed that group.

13 Q. All right. And it shows the people -- that he  
14 is present among the people listed on the first page  
15 of Exhibit 594; right?

16 A. This visit note says "Present," a variety of  
17 people, including Dr. Blackman, yes.

18 Q. And Dr. Hughes, Mr. Sandefur, Mr. Kohnhorst,  
19 Dr. Sanford and Mr. Pritchard were all at the time  
20 Brown & Williamson employees; correct?

21 A. I believe so. I mean, I couldn't be with  
22 absolute certainty, but that would be my belief.

23 Q. Would you turn to the last page of the document,  
24 please, sir. Do you see the reference to "SMOKING  
25 AND HEALTH" and to a separate meeting with Mr. Pep --

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1 Pepples and Mr. -- and Dr. Blackman?

2 MR. SHEFFLER: I think it's Pepples.

3 MS. WIVELL: I think it is, too, and I  
4 always get it wrong. Let me rephrase the question.

5 Q. Do you see there a separate -- a reference to a  
6 separate meeting with Mr. Pepples and Dr. Blackman?

7 A. Yes, I do.

8 Q. All right. And it says there "The current legal  
9 cases in New Jersey were explained. Although they  
10 called for extreme care in what was said or implied  
11 in our writings and talking we must continue to  
12 stress the controversy, and cite anomalies";  
13 correct?

14 A. I mean, that's what it says on this paper. I'm  
15 not sure what the -- the "they" refers to, but that's  
16 what's stated here.

17 Q. And then in that sentence, the "we must" is  
18 underlined; right?

19 A. It's underlined on this document. I'm not sure  
20 whether it's type underlined or something that was  
21 written in.

22 Q. All right. But the words "we must" are  
23 underlined; correct?

24 A. Yes, on this copy of the document.

25 Q. And it goes on to say "To remain silent would

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1 not be in the interests of the industry"; right?

2 A. That's what it says here.

3 Q. Did you ever talk to Dr. Blackman about that  
4 meeting?

5 A. No, I have not.

6 Q. So you don't know of anything that occurred at  
7 that meeting that is contrary to what's written  
8 here, --

9 MR. FRANKEL: Object to form.

10 Q. -- do you, sir?

11 MR. SHEFFLER: Object.

12 A. I mean, I -- I don't know of that meeting or any  
13 of the details related to that meeting. I mean, I  
14 can give a view on -- on again the subject we've been  
15 discussing for a while in relation to controversy and  
16 exactly what has happened in terms of -- of the  
17 real -- of real life. But was I at that meeting?  
18 No, I was not, and -- and I can't really give a view  
19 as to what happened at that meeting or in the  
20 statement you've read to me who the "they" refers  
21 to.

22 Q. Well do you understand that "the current legal  
23 cases in New Jersey" refers to the Dewey and the  
24 Cipollone cases which were filed in New Jersey?

25 MR. SHEFFLER: Object.

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1 A. I mean, I -- I don't have detailed knowledge  
2 of -- of litigations that happen in the United  
3 States. I've heard of the Cipollone case. I haven't  
4 heard of the other case you just stated, and I  
5 actually don't know whether in February 6th, 1984  
6 whether those cases were undergoing or not.

7 Q. Now, sir, at the time that this meeting took  
8 place, there was a great deal of statistical evidence  
9 already linking smoking and disease; isn't that  
10 true?

11 A. This meeting was in 1984, and I think, yeah,  
12 there had certainly been epidemiological studies for  
13 many years previous to that indicating that a  
14 relationship between smoking and various diseases.

15 Q. Now at the time this meeting took place, it --  
16 it was known by the B.A.T. Group that it was not  
17 simply the volume of information on smoking and  
18 health that led medical authorities to believe that  
19 smoking caused a number of diseases, but it was also  
20 the nature and quantity of the evidence; isn't that  
21 true?

22 MR. SHEFFLER: Objection to the form of the  
23 question, vague, overbroad.

24 A. In terms of any understanding I get out of this  
25 document, I mean, I'm not sure I can make a

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1 conclusion. I think clearly if you, as I have in  
2 front of me here, read the various reports by the  
3 U.S. Surgeon General or by -- the reports by the  
4 Independent Scientific Committee on Smoking and  
5 Health, that there is a variety of data that people  
6 have taken and for them to reach their view. I think  
7 primarily that is statistical associations, but  
8 clearly people have looked at other types of  
9 scientific data also.

10 Q. Well, sir, and isn't it a fact that at the time  
11 that this meeting took place, it was known to the  
12 B.A.T. Group members that there was no controversy?

13 MR. SHEFFLER: Objection. This has been  
14 asked and answered repeatedly.

15 A. I mean, my answer is, I mean, it depends again  
16 what the term is -- "controversy" is referred to  
17 here. As I said, I wasn't at that meeting. The fact  
18 is again, as -- as I've referred to in the past, that  
19 in practical terms, in real life and where people  
20 have taken their views on the smoking and health have  
21 been predominantly from the public health  
22 authorities. And whatever these reference are to  
23 controversy, the fact is, in my understanding,  
24 British-American Tobacco Company has not made  
25 statements to the public that has taken away what I

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1 think the public's views -- the public's predominant  
2 source of views are, which -- which is the public  
3 health authorities.

4 Q. What's the Blue Book, sir?

5 A. I'm not sure that there is the Blue Book. Is  
6 there a reference to it in here?

7 Q. I'm just asking if you know what the Blue Book  
8 is.

9 MR. SHEFFLER: Objection to the form,  
10 overbroad. Any -- there's -- there's a -- Harvard  
11 Citations is a blue book.

12 A. I mean, I've heard of -- of a Blue Book.

13 Q. Do you understand --

14 A. I presume it's not this blue book here by  
15 Nicholas Wald and Peter Froggatt. I mean, to try and  
16 answer your question I think in -- in a helpful  
17 manner, I've heard of something called the Blue Book,  
18 which I gather is a -- a compendium of -- of data  
19 from -- from external research looking at a broad  
20 range of data in relation to smoking and health.

21 Q. The Blue Book was put together by the R&D  
22 department of BATCO to discuss the issues of smoking  
23 and health; isn't that true?

24 MR. SHEFFLER: Objection to the form.

25 A. I mean, I -- my belief is that there was a

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1 compendium of epidemiological studies put together as  
2 one part of the considerations of British-American  
3 Tobacco in relation to smoking and health. It was by  
4 no means the only part of those considerations.

5 Q. And the Blue Book was entitled "Smoking and  
6 Health," wasn't it, sir?

7 A. I'm not sure whether it was entitled "Smoking  
8 and Health" or not. I've heard it referred to as a  
9 compendium of epidemiological studies.

10 Q. Well you understood that in the early '80s the  
11 R&D department at BATCO put together the Blue Book;  
12 isn't that true?

13 A. I mean, my understanding is that -- that some  
14 people at R&D rather than the whole R&D department  
15 gathered together information from the public domain  
16 and put it together as a compendium.

17 Q. And those people included Ray Thornton and  
18 Dr. Blackman; isn't that true?

19 A. That is my belief, certainly that Dr. Thornton  
20 was involved in that, and I'm not sure to what extent  
21 Dr. Blackman was. I believe that Dr. Thornton was --  
22 would have been the person who put together most of  
23 that information.

24 Q. And when this book on smoking and health was put  
25 together, it was sent to BATCO consultants for their

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1 comments; isn't that true?

2 MR. SHEFFLER: Objection to the form.

3 Which book are we talking about? He's named one book  
4 and you've named a different one.

5 MS. WIVELL: No, I don't think that's  
6 true.

7 MR. SHEFFLER: Well he's talked about -- he  
8 said that the book was entitled "The -- The  
9 Compendium of Epidemiological Studies," I believe,  
10 and you're talking about a book entitled -- now  
11 entitled "Smoking and Health." Are they -- I don't  
12 know if they're the same or not, but that's my  
13 objection because the record is unclear. If you want  
14 the record to be unclear, go ahead, Doctor.  
15 A. Could you -- sorry. Could you repeat the  
16 question again.

17 Q. Now, and when this book on smoking and health  
18 was put together, it was sent to BATCO consultants  
19 for their comments; isn't that true?

20 MR. SHEFFLER: Same objection.

21 A. I don't have enough detailed knowledge in terms  
22 of where the compendium, as I understand it, was sent  
23 and who it might have been sent to.

24 (Plaintiffs' Exhibit 595 was marked  
25 for identification.)

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1 THE WITNESS: Thanks.

2 BY MS. WIVELL:

3 Q. Sir, showing you what's been marked as  
4 Plaintiffs' Exhibit 595, this document begins with  
5 the Bates number 100432193; correct?

6 A. That's correct.

7 Q. And it is --

8 The first page is a letter from  
9 Francis J. C. Roe to Dr. Ray Thornton; right?

10 A. That's correct.

11 Q. And at the time -- pardon me.

12 At the time Dr. Thornton was with Group Research  
13 and Development Centre, British-American Tobacco  
14 Company Limited; right?

15 A. That's the address noted there, yeah.

16 MR. SHEFFLER: Counsel, we've -- we've had  
17 a chance to go through the lengthy predesignation of  
18 documents, and this document does not appear to be on  
19 the list, either list, either the designated list or  
20 the supplemental designated list. And therefore, we  
21 object to the use of the document with this witness.

22 MS. WIVELL: Actually I believe it was  
23 previously marked as Plaintiffs' Exhibit 422, and I  
24 didn't realize it until I had it re-marked. I'm  
25 sorry. So it would be on the predesignation list.

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1 BY MS. WIVELL:  
2 Q. Sir, the first page of this document is a letter  
3 from Francis Roe to Dr. Thornton; right?  
4 A. That's correct.  
5 Q. And Mr. Roe -- or I'm sorry, doctor -- it's  
6 Dr. Roe, isn't it?  
7 A. I'm not sure whether it's doctor or mister. I'm  
8 sorry, it says right at the top here "Dr. Francis J.  
9 C. Roe" and it gives his qualifications, yeah.  
10 Q. All right. Well you understand that he was a  
11 B.A.T. -- BATCO consultant; right?  
12 A. It's my understanding that Francis Roe is -- is  
13 a scientist that has consulted on occasion with  
14 British-American Tobacco.  
15 Q. All right. And he had been submitted the  
16 revised book on smoking and health according to the  
17 cover letter; right?  
18 A. It says that he's giving comments on a revised  
19 book on smoking and health, yes.  
20 Q. And he says "It falls a long way short of  
21 credibility and ... would be disastrous to release it  
22 as BAT's considered view in this country"; right?  
23 A. He says that.  
24 Q. All right. He also goes on to say that "It is  
25 not really true, as the American Tobacco Industry

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1 would like to believe, that there is a raging  
2 worldwide controversy about the causal link between  
3 smoking and certain diseases"; isn't that true, sir?  
4 A. I'm sorry, where's that? It's certainly not on  
5 the first page.

6 Q. No, it's the top of the second page, isn't it,  
7 sir?

8 A. I don't know. I need to turn over.

9 MR. SHEFFLER: Objection. Counsel, do you  
10 have the book that this is -- this commentary is  
11 referring to? I object because the -- the predicate  
12 questions for this document was with respect to a  
13 Blue Book or an --

14 MS. WIVELL: I object to your comments on  
15 this on the record.

16 MR. SHEFFLER: Well I think I have the  
17 right to do this.

18 MS. WIVELL: I don't think you do, sir. I  
19 think you're coaching the witness.

20 MR. SHEFFLER: Well I'm going -- I'm not  
21 coaching the witness. I'm going to make my objection  
22 for the record.

23 I believe this is inappropriate use of the  
24 document. I think it's ambiguous and I think it  
25 is -- is wrong to use the document in the format that

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1 you have. The document does not identify what it was  
2 referring to. The questions leading up to this --  
3 this document had to do with some Blue Book. There's  
4 nothing in this document talking about a Blue Book  
5 and there's been no foundation laid for it, and I  
6 object on that basis.

7 BY MS. WIVELL:

8 Q. Do you have my question in mind, sir?

9 A. Oh, no, sorry. Could you repeat it?

10 Q. Certainly. And he goes on to say "It is not  
11 really true, as the American Tobacco Industry would  
12 like to believe, that there is a raging worldwide  
13 controversy about the causal link between smoking and  
14 certain diseases"; isn't that true, sir?

15 A. I'm not sure he goes on to say, but certainly  
16 that is under "Comments on Substance," that the first  
17 statement he gives in reference to page one, para  
18 six, of -- of this document that I haven't seen on  
19 issues on -- of smoking and the -- exactly what you  
20 just read out from this document.

21 Q. All right. Sir, if we turn to the last page of  
22 the document, there is a letter there to Kendrick  
23 Wells, Corporate Counsel at Brown & Williamson  
24 Tobacco Corporation; isn't that true?

25 A. There is some letter which is not signed. I

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1 don't know whether it's a -- a proper letter or a  
2 draft letter, but certainly at the bottom of it it  
3 says "L C F BLACKMAN." At the top of it it says  
4 "Mr" K -- sorry, "J Kendrick Wells III."

5 Q. All right. And you understand that J. Kendrick  
6 Wells, III, is a lawyer for Brown & Williamson  
7 Tobacco; right?

8 A. Well on this letter it states his position as  
9 being corporate counsel, B&W Tobacco Corporation.

10 Q. All right. And you know that he's a lawyer for  
11 Brown & Williamson; right?

12 A. Yes, I do.

13 Q. All right. And it says in the first sentence of  
14 that I at last -- or "At last I enclose an up-date on  
15 Son of Blue Book"; right?

16 A. That's what it says here.

17 Q. All right. And do you understand that what's  
18 being referred to here is the document that was  
19 submitted to Dr. Roe?

20 MR. SHEFFLER: Objection, lack of  
21 foundation.

22 A. I mean, my answer is I have -- I have no idea.  
23 I don't know whether this -- this letter attached to  
24 the back of this document was originally appended to  
25 these comments from -- from Dr. Roe, whether -- it

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1 doesn't seem to me that that's likely to be the case  
2 since it says "I enclose an up-date of the Son of  
3 Blue Book" and I don't see any appendage here  
4 which -- which would suggest that we have in this  
5 document whatever the Son of Blue Book is.

6 Q. All right. Well at the bottom it says "PS:  
7 With Geoff Felton and Ray Thornton I am progressing  
8 the alternative version of the publication, as  
9 proposed and outlined by Francis Roe"; correct?

10 A. That's what it says.

11 Q. All right. And if you look at the page that  
12 ends with Bates number 200 in Exhibit 595, it's  
13 entitled "The Issue of Smoking"; right?

14 A. 200 says, yeah, "The Issue of Smoking."

15 Q. And this is a memo from Ray Thornton to  
16 Dr. Blackman enclosing the comments of Dr. Roe on the  
17 book; isn't that true?

18 A. It says at the top of this "I have received the  
19 enclosed comments from Dr. F.J.C. Roe on this book."

20 MR. FRANKEL: I would object --

21 MR. SHEFFLER: Let the record reflect that  
22 the letter that is dated October 1982 to Wells is  
23 about six months after the memo to Thornton.

24 MS. WIVELL: I object to your coaching the  
25 witness.

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1                   MR. SHEFFLER: It's not coaching. You're  
2 trying to mislead the witness and trying to use these  
3 exhibits inappropriately. There's a number of pages  
4 stapled together here. There's no indication that  
5 any of these are related to anything else. I don't  
6 know how this document was used in a prior  
7 deposition. It certainly wasn't designated to us for  
8 this deposition except by -- by reference to other --  
9 other depositions, and I'm not sure how this was used  
10 in those depositions.

11                  MR. FRANKEL: I would -- I would also  
12 object to the continued use by counsel of the phrase  
13 "isn't that true" as being ambiguous because it's  
14 unclear whether the question means whether the  
15 substance of the statement as read is true or whether  
16 the statement was correct -- correctly read into the  
17 record.

18 BY MS. WIVELL:

19 Q. Now, sir, isn't it a fact that BATCO's own head  
20 of R&D believed that the pub -- that the company  
21 should change its position on smoking and health and  
22 say publicly what it had been saying privately for  
23 years?

24                  MR. SHEFFLER: Objection to the form,  
25 overbroad.

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1 A. I mean, to try and respond to your question, do  
2 you have any particular head of R&D in mind?

3 Q. How about Dr. Green?

4 A. I mean, I've seen a variety of -- of -- of  
5 writings of Dr. Green, who was at R&D for some time  
6 and -- and wrote a considerable number of -- of memos  
7 in relation to smoking and health. I gather that  
8 there may be some of those memos that -- that make a  
9 suggestion in terms of discussing causality, but in  
10 general my view again is of what British-American  
11 Tobacco has done in terms of its -- its -- its -- its  
12 views and its actions in relation to smoking and  
13 health I believe have been consistent and  
14 responsible.

15 Q. Now, sir, isn't it a fact that BATCO has known  
16 that if you examine the medical research, you will  
17 find more smokers are likely to suffer disease than  
18 nonsmokers?

19 A. If you look at epidemiological studies of -- of  
20 groups of people in -- in different parts of the  
21 world, it is generally the fact that what you'll find  
22 is a higher instance of lung cancer in the group that  
23 are smokers compared to the group that are  
24 nonsmokers.

25 Q. Well that fact is unquestionable, isn't it,

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1 sir?

2 MR. SHEFFLER: Objection.

3 A. I wasn't questioning that. What I was -- I was  
4 trying to say is that what the scientific data has --  
5 has shown. The -- I mean, the -- the studies have  
6 been published for many years starting in the 1950s  
7 and -- and continue to be published today, and  
8 although those studies give different relative risks  
9 between the two groups depending somewhat upon the  
10 country; for example, data in China and Japan would  
11 be quite different from data in the United States and  
12 in the U.K., generally it has been found that groups  
13 of smokers have a higher instance of lung cancer than  
14 groups of nonsmokers in such epidemiological  
15 studies.

16 Q. Well did BATCO ever tell the people who smoked  
17 its cigarettes that if you examine the medical  
18 research, you will find that more smokers are likely  
19 to suffer from disease than nonsmokers?

20 A. I mean, in the -- certainly any public  
21 statements I make refer to smoking being an important  
22 risk factor. That refers exactly to that point. I  
23 think in terms of people's general understanding  
24 way -- way back in terms of the 1950s when these  
25 issues were first debated, as the first scientific

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1 studies on -- on epidemiological studies on smoking  
2 and health were published, I think that's a matter  
3 that was -- was publicized very broadly in the public  
4 arena.

5 Q. Well, sir, I'm not talking about the public  
6 health area here. I'm not talking about the  
7 governments, and I'm not talking about the  
8 universities. I'm talking about BATCO.

9 Did BATCO ever come out and say to people  
10 smoking its cigarettes, "If you examine the medical  
11 research, it is unquestionable that you will find  
12 that more smokers are likely to suffer disease than  
13 nonsmokers"?

14 MR. SHEFFLER: I object, move to strike  
15 counsel's comments; they're inappropriate. As far as  
16 her question, it was asked and it was answered  
17 responsively, and I object.

18 A. And again, I mean, the response is that for many  
19 years British-American Tobacco's view of the science  
20 is that smoking is a risk factor for certain  
21 diseases. What -- what my understanding of that term  
22 means is that there are statistical associations as  
23 shown in epidemiological studies which show that  
24 groups of smokers have in those -- in such studies a  
25 higher instance of lung cancer than nonsmokers.

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1 Q. Sir, I'm not talking about risk factors and I'm  
2 not talking about statistical associations. I'm  
3 asking you isn't it a fact that BATCO never ever has  
4 told people who smoke its cigarettes that if you look  
5 at the medical literature, that it is unquestionable  
6 that smokers are more likely to get disease than  
7 nonsmokers?

8 MR. SHEFFLER: Objection. That question  
9 has been asked and answered three times. And I also  
10 object to the dramatic predicate of counsel and move  
11 to strike.

12 A. My answer to that question is you can't separate  
13 statistical studies from that question because that's  
14 precisely the information on which is gained the  
15 knowledge that the incidence of lung cancer in groups  
16 of smokers and in epidemiological studies is higher  
17 than groups of nonsmokers. The two are inextricably  
18 combined in terms of the scientific arena.

19 THE WITNESS: Do you think we could --

20 MR. SHEFFLER: Absolutely. We'll take a  
21 break. We've been going an hour.

22 THE REPORTER: Off the record, please.

23 (Recess taken.)

24 (Plaintiffs' Exhibit 596 was marked  
25 for identification.)

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- 1 BY MS. WIVELL:
- 2 Q. Sir, showing you what's been marked as
- 3 Plaintiffs' Exhibit 596, this is a document that
- 4 begins with the Bates number 103366389; correct?
- 5 A. Correct.
- 6 Q. All right. And it's entitled "CACVIII,
- 7 PROPOSITION"; right?
- 8 A. Yeah, it's "CAC." I assume it's Roman numerals
- 9 for -- for "VIII." It's V-I-I-I.
- 10 Q. All right. And you understand that the "CAC"
- 11 is -- refers to the "Chairman's Advisory Committee";
- 12 right?
- 13 A. I know "CAC" can stand for the "Chairman's
- 14 Advisory Committee." I'm not sure from -- from the
- 15 document I have in front of me that's what it stands
- 16 for, but it could stand for that.
- 17 Q. Well you understood that there were meetings of
- 18 the Chairman's Advisory Committee that were
- 19 enumerated with Roman numerals; right?
- 20 A. Actually I'm -- I'm not sure whether all of
- 21 their meetings were enumerated with -- with Roman
- 22 numerals or not.
- 23 Q. All right. Would you turn to the page that ends
- 24 with Bates number 392.
- 25 A. Yeah.

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1 Q. Do you see a box at the -- toward the bottom of  
2 the page?

3 A. There's a series of paragraphs that have been  
4 outlined by a -- a box, almost kind of a spacing, one  
5 bit of it.

6 Q. And it --

7 The first sentence of that box says "IT IS  
8 UNQUESTIONABLE THAT IF YOU EXAMINE THE MEDICAL  
9 RESEARCH YOU WILL FIND THAT MORE SMOKERS ARE LIKELY  
10 TO SUFFER FROM DISEASES THAN NON-SMOKERS"; right?

11 A. That's what it says, yeah.

12 Q. And it goes on to say "BUT DOCTORS BELIEVE  
13 EVIDENCE IS SUFFICIENT TO SHOW CAUSALITY" in the next  
14 paragraph; right?

15 A. Well it goes on to say that "THIS IS" A "FACT.  
16 BUT THIS IS NOT TO SAY THAT IF YOU SMOKE YOU  
17 AUTOMATICALLY BECOME ILL. MOST SMOKERS DO NOT  
18 SUFFER." Full stop. Then it says, "BUT DOCTORS  
19 BELIEVE EVIDENCE IS SUFFICIENT TO SHOW CAUSALITY."

20 Q. All right. Sir, BATCO never issued a press  
21 release that said it is unquestionable that if you  
22 examine the medical research you will find that more  
23 smokers are likely to suffer from disease than  
24 nonsmokers; isn't that true, sir?

25 MR. SHEFFLER: Objection.

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1 A. I can't remember a press release which gives  
2 that precise information, but, I mean, what that says  
3 is that -- that smoking is a risk factor for various  
4 diseases, and that I think has certainly been the  
5 statement we have -- have made on inquiry for many,  
6 many years and the statement I made earlier today in  
7 terms of trying to -- to put forth the view of  
8 British-American Tobacco on -- on precisely this --  
9 this type of research.

10 Q. Sir, has British-American Tobacco Company ever  
11 taken out or issued a press release saying that  
12 cigarette smoking was toxic?

13 A. Have we written a press release which stated  
14 specifically cigarette smoking is toxic? As far as  
15 I'm aware, not.

16 Q. All right. And isn't it a fact that Richard  
17 Green -- I'm sorry, strike that.

18 Isn't it a fact that Steven Green, head of  
19 research and development for BATCO, held that  
20 opinion?

21 MR. SHEFFLER: Objection. I -- lack of  
22 foundation. There was no foundation laid that any  
23 Steven Green was ever head of research and  
24 development for BATCO.

25 A. To try and respond to your question in a helpful

1 way, if you mean Dr. Green, who was head of research  
2 for some time at British-American Tobacco, I mean, he  
3 wrote extensively on this matter, and -- and as far  
4 as I can tell from what I've read from -- of -- of  
5 his writings, that in the majority of those writings  
6 he -- he looks at a working hypothesis and in terms  
7 of relation to -- to smoking and -- and disease and  
8 whether those statistical relations can be  
9 interpreted as -- as being causal.

10 Q. Sir --

11 MS. WIVELL: Mr. LaBorde, could you get out  
12 Exhibit 501.

13 (Plaintiffs' Exhibit 501 was handed  
14 to the witness.)

15 THE WITNESS: Thanks.

16 BY MS. WIVELL:

17 Q. Sir, showing you what's previously been marked  
18 as Exhibit 501, this is a memo from Dr. S. J. Green  
19 to Patrick Sheehy, who was chair of B.A.T.  
20 Industries; correct?

21 A. The date is 17th of the 5th, 1976. I'm not sure  
22 whether P. Sheehy was chair of B.A.T. Industries at  
23 that time, but it certainly is a letter from S. J.  
24 Green to P. Sheehy, Esquire -- Esquire.

25 Q. And he encloses comments on a paper, doesn't

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1 he?

2 A. I -- I'd need to read it. Can I just spend a  
3 bit of time reading this?

4 Q. Well, sir, you can tell from the first page that  
5 he encloses comments on a paper, doesn't he?

6 A. Well I haven't even had a chance to read that  
7 first page. I'm sorry. If I can just read the --

8 MR. SHEFFLER: It's a brief paragraph.  
9 Just let him read the paragraph, Counsel.

10 A. Yeah, I've read the first paragraph.

11 Q. And he encloses comments on a paper, doesn't  
12 he?

13 A. What he says is "You might care to see my  
14 comments on the Kalhok," if that's the correct  
15 pronunciation, "and Short paper."

16 Q. Now if we turn to the next page, his comments  
17 begin there, don't they, sir?

18 A. Well it's -- the next page says "THE EFFECT OF  
19 RESTRICTIONS ON CURRENT MARKETING AND MARKETING IN  
20 THE FUTURE," and I don't know whether that refers to  
21 this Kalhok and Short paper or not.

22 Q. It --

23 This page is consecutively Bates numbered  
24 following the first page of Exhibit 501; right?

25 A. The number is 28, following 27.

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1 Q. Now, sir, would you take a look at the last  
2 paragraph on the second page of the document. There  
3 he says "In view of the known toxicity and the strong  
4 association of smoking and disease I believe any  
5 attempt to increase the smoking habit is  
6 irresponsible"; correct?

7 A. Point four, which is -- which is under something  
8 called "Comments on Conclusions," says "In view of  
9 the known toxicity and the strong association of  
10 smoking and disease I believe any attempt to increase  
11 the smoking habit is irresponsible. Equally I  
12 believe it .. irresponsible to exaggerate the dangers  
13 in order to decrease the habit," but I'm uncertain as  
14 to what he's referring to in terms of his review of  
15 this paper.

16 Q. Now, sir, did BATCO at any time issue a press  
17 release saying that smoking was knowingly toxic --

18 MR. SHEFFLER: I object --

19 Q. -- or was toxic?

20 MR. SHEFFLER: I object to that misuse of  
21 this document. As reflected on the first page, these  
22 are Dr. Green's comments, not R&D comments, as he so  
23 states, and it's a misuse of the document.

24 MS. WIVELL: Object to your coaching the  
25 witness.

1 A. Could you -- sorry, could you ask the question  
2 again.

3 Q. Certainly I will.

4 Now, at any time did BATCO issue a press release  
5 saying that smoking was toxic?

6 MR. SHEFFLER: Objection, same objection,  
7 and also asked and answered.

8 A. I mean, to my understanding, British-American  
9 Tobacco Company has not issued a press release, which  
10 presumably a press release would require there to be  
11 some news involved, saying that tobacco smoke was  
12 known to be toxic. Having said that, of course it is  
13 the -- the views of the public health authorities  
14 that have been promoted out there. It is also pretty  
15 clear in terms of health warnings that are -- are --  
16 are present on -- on packages of cigarettes what  
17 views are, and I'm not sure really -- I mean, I can  
18 answer your question obviously precisely, and the  
19 answer is no, but in terms of what impact that has on  
20 the -- I mean, I'll let you ask me the questions.

21 Q. Move to strike the portion of the answer  
22 beginning with "Having said that."

23 Now, sir, has B.A.T. Industries ever issued a  
24 press release saying that cigarette smoking is  
25 toxic?

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1 A. It is my understanding that British -- B.A.T.  
2 Industries has never issued precisely a -- a press  
3 release which says that cigarette smoking is toxic.  
4 And again, I mean, in terms of trying to help an  
5 understanding of where this -- this question comes  
6 from, I mean, it's clear from British-American  
7 Tobacco's point of view that those types of issues  
8 have been discussed in public, and one would imagine  
9 the only time you would issue a press release, if  
10 there was something that was news. I mean, that --  
11 that tends to be, I believe, the reason you would  
12 issue a press release, and I don't think any of the  
13 issues we're discussing here are news to the general  
14 public.

15 Therefore, I would not have expected  
16 British-American Tobacco to issue a press release on  
17 something which was clearly not news but instead the  
18 general view of the population based on what the  
19 public health authorities have said.

20 Q. Well, sir, let me ask you this: Isn't it a fact  
21 that the B.A.T. Group did inhalation studies that  
22 showed -- I'm sorry, strike that.

23 Isn't it a fact that the B.A.T. Group did  
24 inhalation studies on rodent species that  
25 demonstrated that their exposure to cigarette smoke

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1 caused respiratory tract tumors?

2 MR. SHEFFLER: Objection, lack of  
3 foundation.

4 A. I mean, the answer is -- is no in any -- any  
5 scientifically acceptable manner. If I can try and  
6 help you in responding to the type of research that  
7 British-American Tobacco had done on inhalation, it  
8 really very much parallels research that's been done  
9 in the -- the general academic community in trying to  
10 provide or -- or to produce animal tests which would  
11 under conditions where animals were inhaling tobacco  
12 smoke, those animals would -- would get lung tumors  
13 of some sort, as -- as -- as you all know. And the  
14 U.S. Surgeon General has -- has looked at that  
15 information and -- and said that it's not been  
16 possible to do that in any scientific valid manner.  
17 I think that's exactly the -- the case also with  
18 research that was undertaken at British-American  
19 Tobacco.

20 Q. Well just so we're clear here, there was  
21 research undertaken at British-American Tobacco  
22 Company exposing rodent species to tobacco smoke;  
23 right?

24 A. That's correct.

25 Q. All right. And those -- I'm sorry.

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1           That research demonstrated an increased  
2 incidence of lung tumors in the animals exposed to  
3 the cigarette smoke; right?

4   A.   No, that's incorrect.  What -- what I understand  
5 of -- of that research is -- is one of the -- the  
6 long-term studies found one lung tumor type in -- in  
7 one of the animals that was exposed to smoke and one  
8 in the same group of the sham exposed; that means  
9 those that weren't exposed to tobacco smoke.  And in  
10 terms of trying to interpret those types of  
11 scientific data, what -- what people do is, because  
12 obviously these types of matters can happen  
13 spontaneously, you look for significant differences  
14 statistically between two groups of animals.

15           And as -- as far as I'm aware, that wasn't found  
16 in any research undertaken by British-American  
17 Tobacco, nor has it generally been found in research  
18 undertaken by the general academic community.

19   Q.   Well, sir, I'm focusing just on the research  
20 that was done at British-American Tobacco Company.  
21 Isn't it a fact that most of the animals died before  
22 they could even live long enough to develop tumors?

23           MR. SHEFFLER:  Objection to the form.

24   That --

25   A.   Well, I mean, in any scientific experiment on --

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1 on animals where you're looking for an endpoint, I  
2 mean, clearly what you do is controls versus cases.  
3 If the animals were dying in the controls, then  
4 cases, it wouldn't be a very useful experiment. It  
5 was my understanding of the research that people  
6 tried both short-term and -- and long-term inhalation  
7 tests, and again just as the general scientific  
8 community has found, it has not been possible to  
9 validate inhalation as -- as a useful test in -- in  
10 terms of trying to understand smoking-and-health  
11 issues.

12 Q. Well so as a result, the human experiment on  
13 people smoking continued because you couldn't do the  
14 experiment on animals; isn't that right?

15 MR. SHEFFLER: Objection, lack of  
16 foundation. Objection, ambiguous and vague as to  
17 "human experiment" has not been defined.

18 A. I don't know what at all you mean by "the human  
19 experiment."

20 Q. Okay. Well let me ask you this: I think you  
21 told us -- correct me if I'm wrong -- that it wasn't  
22 possible to do experiments exposing animals to  
23 inhalation studies to determine whether or not those  
24 studies produced lung tumors. Is that right?

25 A. It's been -- sorry.

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1 MR. SHEFFLER: Go ahead.

2 A. Oh. I mean, it's been the general scientific  
3 experience, as is clearly documented in the U.S.  
4 Surgeon General's report, that it's not been possible  
5 to develop inhalation tests in animals that have  
6 produced to a sufficient scientific quality lung  
7 tumors in -- in those animals. I think it's a matter  
8 that actually continues to be researched today.  
9 There's an institute called the Lovelace Institute in  
10 the United States that continues today to attempt to  
11 find a specific animal model which will respond to  
12 inhalation, and when they published research even a  
13 year ago, they said, "No, we still can't find an  
14 animal model which will induce human-type lung tumors  
15 in -- in -- in these animals," but they continue to  
16 do that research.

17 Q. Well, sir, isn't it a fact that a scientist in  
18 Germany by the name of Dontenwill using Syrian golden  
19 hamsters produced results which showed there was a  
20 dose/response relationship between the exposure to  
21 cigarette smoke and lung tumors? I'm sorry, of  
22 cigarette smoke and respiratory tract tumors?

23 A. I mean, there clearly have been some experiments  
24 which -- which have shown changes in laboratory  
25 animals, and you're right, there is a study by

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1 Dontenwill which looks at Syrian golden hamsters. I  
2 mean, that study is one which has formed part of the  
3 scientific information in the public domain. It's --  
4 it's certainly part of the research that the United  
5 States Surgeon General reviewed when he came to the  
6 conclusion that animal inhalation tests have simply  
7 not been able to provide a useful test in terms of  
8 trying to assess what may be happening in the human  
9 condition.

10 Q. Now the tobacco industry, including BATCO, tried  
11 to continue those experiments, didn't they?

12 MR. SHEFFLER: Objection, vague.

13 A. I mean, it is -- it is clear that  
14 British-American Tobacco have attempted to undertake  
15 research, just as the general scientific community  
16 has, on inhalation of tobacco smoke in -- in  
17 laboratory animals, yes.

18 Q. And a clear dose/response relationship emerged  
19 from those studies that BATCO did; isn't that true?

20 MR. SHEFFLER: Objection, vague.

21 A. Again, I -- I tried to respond to this before.  
22 It's my understanding that that research reported no  
23 difference between those that were exposed to smoke  
24 and those which we called the sham controls, in that  
25 of the group of animals, one -- just one animal that

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1 was exposed to smoke was found to have a tumor and  
2 one of those which was not exposed to smoke was also  
3 found to have a tumor. These types of animals, I  
4 gather, can get these types of tumors spontaneously,  
5 and so there was clearly no difference at all, let  
6 alone a statistical difference, between those two  
7 groups.

8 Q. Well and isn't it a fact that there was no  
9 statistical difference because most of the group that  
10 was exposed to smoke died before they could develop  
11 any tumors?

12 MR. SHEFFLER: Objection to form.

13 A. I mean, that's not my understanding of -- of the  
14 research, but if that were to be the case, I mean,  
15 that's an experiment that you would have to repeat.  
16 And again, the scientific community has attempted for  
17 years to -- trying to do such studies. And as I  
18 said, I mean, even as of a year ago there are  
19 research establishments in the United States who  
20 continued to undertake such research to try and find  
21 an animal modelable -- I'm sorry, an animal model  
22 that would be relevant to human health.

23 Q. All right. But in the meantime while this  
24 attempt to try and find an animal model to expose  
25 smoke, cigarette smoke, to went on, the B.A.T. Group

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1 kept selling cigarettes; right?

2 A. British-American Tobacco has sold cigarettes for  
3 many years. That is clearly the case. Knowledge in  
4 relation to biological mechanisms related to the  
5 associations that have been identified between  
6 smoking and disease --

7 THE WITNESS: I'm sorry, could you read  
8 that back. I'm not sure what I was saying at the end  
9 there.

10 (Record read by the court reporter.)

11 A. -- continues to be sought, and that takes a  
12 variety of -- of -- of different routes in -- in  
13 terms of the science. Some of that research has --  
14 has been involved in looking at inhalation studies,  
15 but research continues.

16 The fact is, is the public health authorities  
17 have given a view and given a view to the public in  
18 terms of smoking and health. The fact is that there  
19 is no country in the world, as far as I know, that  
20 has made cigarettes illegal. The fact is that --  
21 that cigarettes certainly carry health warnings that  
22 the governments asked us to put on, and even in  
23 countries where governments have not asked us to put  
24 on we put on health warnings as a matter of -- of a  
25 general standard. And people take their -- their

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1 informed choice as to whether they should smoke or  
2 not.

3 Q. Well, sir, did British-American ever --  
4 British-American Tobacco Company or any of the B.A.T.  
5 Group companies ever tell smokers that they were part  
6 of a large human experiment?

7 MR. SHEFFLER: Objection, assumes facts not  
8 in evidence.

9 A. It's my understanding that we have never told  
10 smokers they are part of a -- a -- what, a human  
11 experiment? No.

12 (Plaintiffs' Exhibit 597 was marked  
13 for identification.)

14 THE WITNESS: Thanks.

15 BY MS. WIVELL:

16 Q. Sir, showing you what's been marked as  
17 Plaintiffs' Exhibit 597, this is a document Bates  
18 numbered 105318954; correct?

19 A. That's correct.

20 Q. And it's entitled "Conference on Inhalation  
21 Toxicology, Group Research and Development Centre,  
22 Southampton 7 - 9 August 1974"; right?

23 A. That's right.

24 Q. Sir, could you turn to the page that's Bates  
25 numbered 956.

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1 A. Yeah.

2 Q. Do you see the first complete paragraph that  
3 begins with the sentence "But are assumptions of this  
4 kind necessarily so bad?"

5 A. I see that.

6 Q. It goes on to say "The tobacco industry has  
7 become involved in the investigation of the  
8 biological consequences of smoking as a result of the  
9 outcome of a large dose/response experiment. In this  
10 experiment no dosimetry was used, there was no  
11 control over the frequency of smoking or the  
12 concentration of smoke used, and there was no attempt  
13 at random distribution of the test animals to the  
14 various levels of exposure. And yet a clear  
15 dose/response relationship emerged"; correct?

16 A. That's just read directly out of this document,  
17 and I'd also perhaps refer to the first page of the  
18 document, which says "These comments are a personal  
19 reflection upon the outcome of ... three days  
20 proceedings," and I don't know who was the author of  
21 these personal reflections. I guess an E. B.  
22 Wilkes.

23 Q. And this person who wrote this paper goes on to  
24 say "I am referring of course to the epidemiological  
25 study of the smoking habit in man"; right?

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1 A. That's what he says here as his personal  
2 reflection, yes.

3 Q. All right. And he goes on to say "But now,  
4 after many and various epidemiological studies, few  
5 people doubt the existence of a dose/response  
6 relationship in men"; correct?

7 A. That's what it says here.

8 Q. All right. He goes on at the bottom of that  
9 page to talk about "the human experiment will  
10 continue," doesn't he, sir?

11 A. He says that as part of these personal  
12 reflections, yes, at the bottom of the page.

13 Q. He says "Whether we like it or not, the human  
14 experiment will continue ..."; right?

15 A. He says that and goes on to say "and will be  
16 monitored by many" of those "whose sole objective is  
17 to discredit the tobacco industry." I'm not quite  
18 sure what he means by that, but --

19 Q. All right.

20 A. -- that's what he said as part of his personal  
21 reflection, yeah.

22 Q. And, sir, none of the B.A.T. Group ever told any  
23 smoker who was purchasing their cigarettes that they  
24 were part of a human experiment?

25 MR. SHEFFLER: Objection to the form, lack

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1 of foundation.

2 A. Absolutely not, and I think, I mean, what you've  
3 referred to here are some personal reflections by --  
4 by someone who I believe was -- was at Southampton  
5 giving some, I mean, views which are his own views.  
6 I mean, British-American Tobacco doesn't take a view  
7 that there is a human experiment going on here.

8 Q. Well, sir, isn't it a fact that there has been a  
9 human experiment in epidemiolog -- epidemiology which  
10 has gone on over the last 40 years?

11 A. No. I mean, epidemiological studies have for  
12 the last 40 years looked at groups of people; for  
13 example, compare groups of smokers compared to groups  
14 of nonsmokers to identify differences in diseases. I  
15 mean, you could make the same statement there is a  
16 human experiment on -- on people who eat butter, I  
17 mean, in terms of identifying various relative risks  
18 in relation to various diseases; for example, heart  
19 disease.

20 So, I mean, the fact that epidemiological  
21 studies go on and -- and -- and as part of, I mean,  
22 general science doesn't seem to give me an indication  
23 that there's any sort of human experiment. Clearly  
24 epidemiological studies of -- of the nature that look  
25 at smokers versus nonsmokers are human, on humans,

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1 but --

2 Q. Well, sir --

3 MR. SHEFFLER: Let him finish, please.

4 A. -- but, I mean, I can't -- I wouldn't describe  
5 this as a big 40-year human experiment, no.

6 Q. Well clearly more than 40 years ago there were  
7 articles published in the press -- or I'm sorry,  
8 articles published in the scientific literature which  
9 suggested that smoking causes cancer; right?

10 A. There were articles published in the 1950s which  
11 identified a statistical association between smoking  
12 and -- and lung cancer in the first case and later  
13 with various diseases, yes.

14 Q. Well let me ask you this: 45 years ago or so  
15 were -- were there similar studies showing that  
16 butter was related to lung cancer?

17 A. I'm not sure exactly when the first  
18 epidemiological studies were published showing  
19 various dietary factors associated with lung cancer,  
20 but certainly, I mean, that has been part of the  
21 scientific body of information for some time now.  
22 Exactly when the first studies were published, I  
23 don't know.

24 Q. Well let me ask you this: Before cigarettes  
25 were marketed, were there any epidemiological studies

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1 carried out to determine whether or not cigarettes  
2 caused disease?

3 A. I'm not sure what -- what you mean by the term  
4 "marketed." I mean, cigarettes became something  
5 that people used in the 16th Century or so. Were  
6 there scientific experiments on -- on --  
7 epidemiological experiments in the 16th Century? I  
8 believe not. I don't think it was a technique that  
9 was used in the 16th Century.

10 Q. All right. But you would agree, sir, that the  
11 wide distribution of cigarettes only came into --  
12 into existence with the automated cigarette machine,  
13 wouldn't you?

14 MR. SHEFFLER: Objection. We're getting  
15 far afield from the subject matter of this deposition  
16 which was set forth in the notice 30.02(f). I've  
17 been -- I've been very lenient with counsel to  
18 explore these matters she seems to have some interest  
19 in, but I -- I am going to insist that we return to  
20 the subject matter of this deposition.

21 A. I'm sorry, can you read me back the question  
22 again.

23 Q. Certainly.

24 A. I'll try and answer.

25 Q. Would you agree that the wide distribution of

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1 cigarettes only came into existence with the advent  
2 of the automated cigarette machine?

3 A. I don't know. If you -- if you look at the U.K.  
4 situation, certainly, I mean, it's been commonplace  
5 for the use of tobacco for -- for -- for many  
6 centuries. I was actually trying to find here a  
7 quote from the Surgeon General's report that would be  
8 more precise to your answer in terms of usage. There  
9 certainly are -- if I spent some time to dig this  
10 out, will give you a reference to exactly -- exactly  
11 how common the usage of tobacco's been over the  
12 centuries.

13 Q. Well let me ask you this: When those studies  
14 were published in the literature in the mid-'50s  
15 that showed an association between cigarette smoking  
16 and lung disease, did British-American Tobacco  
17 Company start an epidemiological study to determine  
18 whether or not that statistical association was  
19 correct?

20 A. No, I don't believe we started an  
21 epidemiological study. What happened is the general  
22 scientific community started epidemiological studies  
23 as an issue. You can see, for example, in the report  
24 I have here, which is -- which is the report of the  
25 Royal College of Physicians of London, which was

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1 written in 1962, and it was a variety of -- of  
2 epidemial studies -- epidemiological studies that  
3 went on at that time and it was the view certainly of  
4 the Royal College of Physicians, which was -- was  
5 also I guess in -- in this American version copied to  
6 various public health authorities or public health  
7 interests in the United States, that a body of  
8 research was developing that shows that -- that  
9 smoking was a risk factor for lung cancer.

10 Q. Move to strike as nonresponsive. Sir, I am not  
11 talking about what the public health authorities  
12 did. I'm asking about what BATCO did. Did BATCO --  
13 When Dr. Wynder first published his articles  
14 about smoking and lung cancer, did BATCO start an  
15 epidemiological study to determine whether or not  
16 that was true?

17 MR. SHEFFLER: Objection to the statement  
18 of counsel, move to strike. Objection, asked and  
19 answered.

20 A. Let me try and explain and to help exactly what  
21 British-American Tobacco has done since -- since the  
22 Wynder and also obviously in the U.K. the Doll  
23 British doctor studies were published. Very early  
24 on, within -- in the history of that science, what  
25 British-American Tobacco did was obviously start

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1 looking at the scientific developments in the  
2 external literature, started funding independent  
3 research in relation to -- to smoking and disease and  
4 also established a research center which started a --  
5 a program which has gone on for -- for many decades  
6 trying to understand fundamentals of the product,  
7 including chemistry, which in those days was pretty  
8 poorly understood, and as we've been talking about  
9 recently, right through to trying to identify a  
10 variety of either animal or laboratory tests which  
11 would assist our understanding of the  
12 smoking-and-health issues.

13 Q. And so the answer is no, BATCO did not  
14 internally start an epidemiological study to  
15 determine whether or not smoking was  
16 epidemiologically associated with disease; --

17 MR. SHEFFLER: The answer --

18 Q. -- isn't that true, sir?

19 MR. SHEFFLER: The answer was given and the  
20 answer is the answer. And the question was asked and  
21 answered.

22 A. I mean, the answer is that British-American  
23 Tobacco immediately started to fund independent  
24 research on -- on smoking and health and it -- it  
25 started up a whole series of programs of research

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1 in-house. I mean, in terms of epidemiological data,  
2 that developed quite rapidly in the external  
3 literature. There was no point, in -- in my view, to  
4 try and repeat a study if the -- the general  
5 scientific community is -- is creating that study.  
6 It would be duplicative.

7       What clearly we did is look at developments in  
8 that research. It's been our view for many, many  
9 years based on the epidemiological studies that  
10 smoking's a risk factor. I mean, that's what those  
11 studies have said. What epidemiology does is sets up  
12 hypotheses. It says there is some association  
13 between a particular action and a particular disease,  
14 and what that then leads you to is really laboratory  
15 studies to try and identify why, if that is a true  
16 association, what is going on.

17               (Plaintiffs' Exhibit 598 was marked  
18               for identification.)

19               THE WITNESS: Thanks.

20 BY MS. WIVELL:

21 Q. Before we turn to Exhibit 598, you have  
22 mentioned extensive laboratory analyses that were  
23 done by BATCO. Now you would agree that these  
24 extensive laboratory analyses that were done showed  
25 that tobacco contains specific nitrosamine compounds

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1 which are known carcinogens; right?

2 A. Some of -- of these research efforts have been  
3 to identify methods to be able to detect  
4 tobacco-specific nitrosamines, which are a group of  
5 compounds which under animal experiments at high  
6 doses have been shown to be animal carcinogens.

7 Q. All right. Now, BATCO has known for years that  
8 there are nitrosamine -- tobacco-specific  
9 nitrosamines in cigarette smoke; right?

10 A. British-American Tobacco, as -- as I've tried to  
11 state in terms of all of these scientific  
12 developments, has looked at where the -- the  
13 scientific community has been suggesting there are  
14 elements within tobacco smoke that may be of concern,  
15 and tobacco-specific nitrosamines certainly in  
16 particular through the research of the American  
17 Health Foundation have been one group of those  
18 substances that have been identified. And yes,  
19 British-American Tobacco has -- has developed  
20 techniques whereby it could identify tobacco-specific  
21 nitrosamines in tobacco smoke.

22 Q. And when BATCO identified the tobacco-specific  
23 nitrosamines in cigarette smoke, did it tell the  
24 people who were smoking their cigarettes that there  
25 were these carcinogenic compounds in the smoke that

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1 they were inhaling in their lungs?

2 A. If the question is did we again set off a press  
3 release saying, "There are tobacco-specific  
4 nitrosamines in tobacco smoke," your answer is no. I  
5 think that's not again surprising given that press  
6 releases and such would -- would try and tell people  
7 something that's new. Certainly at the time that we  
8 were doing research on -- on tobacco-specific  
9 nitrosamines, it was the general knowledge of the  
10 public as promoted by the public health authorities  
11 that smoking was a cause of lung cancer.

12 So for us to -- to tell people in a press  
13 release that we've identified some substances that in  
14 animal tests have shown to be animal carcinogens I  
15 don't think would have added to that -- that  
16 knowledge within the public.

17 Q. Well and you didn't add to that knowledge within  
18 the public, did -- did you, sir?

19 MR. SHEFFLER: Objection. The question was  
20 asked and answered.

21 A. And again, the answer is there was no need to do  
22 so. In fact, I mean, what was being clearly stated  
23 was -- was far in advance of -- of something which  
24 may be -- have been a -- you know, a response to the  
25 fact that you could measure as the general scientific

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1 community had measured substances in tobacco smoke  
2 which -- which have been shown in -- in animal  
3 studies to be animal carcinogens.

4 Q. Well, sir, did -- did BATCO or any of the B.A.T.  
5 Group companies ever tell the people who smoked their  
6 cigarettes that there's no known safe level of  
7 nitrosamines in cigarette smoke?

8 MR. SHEFFLER: Objection to the form,  
9 assumes facts not in evidence.

10 A. Again, as far as I'm aware, it has never been  
11 something that British-American Tobacco has done in  
12 terms of telling the general public that there is no  
13 known safe level of tobacco-specific nitrosamines.  
14 That is certainly one scientific view in -- in  
15 relation to -- to -- to substances which are shown to  
16 be carcinogenic in -- in animal studies, though not  
17 always a consistent view in terms of whether there  
18 are thresholds for carcinogenesis.

19 The fact is again, I mean, whether -- I mean, we  
20 were clearly not making press releases on all these  
21 matters, but -- but clearly through both health  
22 warnings that appeared on packages, through what was  
23 being stated in -- in the general media from public  
24 health authorities, from governments, people's views  
25 were that -- that smoking was a cause of lung cancer,

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1 and certainly also in terms of -- of more  
2 specifically your point, I don't think there has ever  
3 been a view promoted by a public health authority to  
4 say that -- that smoking was safe in any way.

5 Q. Well, sir, BATCO knew there was no safe level  
6 for nitrosamines; isn't that true?

7 MR. SHEFFLER: Objection to the form of the  
8 question, lack of foundation.

9 A. I mean, again, I mean, let me try and explain  
10 what the data is in relation to tobacco-specific  
11 nitrosamines and what the general scientific  
12 community has said on this. Tobacco-specific  
13 nitrosamines if applied in high doses in animals can  
14 result in -- in tumors in those animals. Whether  
15 that is then the case that tobacco-specific  
16 nitrosamines in the levels which are -- are very  
17 small found in tobacco smoke can give cause to lung  
18 cancer in humans isn't entirely certain.

19 And as you look through the scientific  
20 evaluation of what may and may not be a compound or a  
21 series of compounds in tobacco smoke which may be  
22 giving rise to the association found between smoking  
23 and, for example, lung cancer, you will find that  
24 it's a variety of different compounds that have been  
25 promoted as perhaps the most important. The -- first

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1 of all it was things like benzopyrene; that was  
2 something that Dr. Wynder was suggesting. Much later  
3 it was the American Health Foundation group  
4 suggesting it was nitrosamines.

5 I think it's been, I mean, stated -- and I -- if  
6 I had the time, I could dig it out of these  
7 reports -- stated by the U.S. Surgeon General and by  
8 other public health authorities that it has not been  
9 possible to identify any particular substance that,  
10 in their view, could be -- explain the relationship  
11 between -- that is found in the statistical studies,  
12 and therefore it's not been possible to -- I mean,  
13 for either the public health authorities or for  
14 ourselves to be able to say, "Well this is the  
15 substance that needs to be removed from tobacco  
16 smoke."

17 Q. Move to strike as nonresponsive. Sir, my  
18 question is very simple.

19 BATCO knew there were no safe levels of -- for  
20 nitrosamines; isn't that true?

21 MR. SHEFFLER: That question was asked and  
22 answered, and I object to counsel's predicate  
23 statement.

24 A. I mean, again if you go to what the scientific  
25 data says, you will find if you expose laboratory

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1 animals to tobacco-specific nitrosamines at high  
2 concentrations, you will find tumors. What relevance  
3 that has to exposure to low levels of  
4 tobacco-specific nitrosamines to -- to humans is  
5 clear -- is unclear, and there has never been a time  
6 where the -- where the public health authorities or  
7 the medical/scientific community has said, "Right,  
8 this is the one substance we believe has to be  
9 removed from tobacco smoke, and if one were to do  
10 that, it would be safe in some fashion."

11 MS. WIVELL: Mr. LaBorde, could you get out  
12 Exhibit 436, please.

13 (Discussion off the stenographic record.)

14 BY MS. WIVELL:

15 Q. Sir, showing you what's previously been marked  
16 as Exhibit 436, this is a BATCO document; isn't that  
17 true?

18 A. Let me see. It doesn't give me any indication  
19 here that it's a BATCO document. What it says at the  
20 top, it says "Nitrosamines: A Brief Summary," and  
21 then it --

22 Q. Well it says re -- "RESTRICTED, Nitrosamines: A  
23 Brief Summary," doesn't it, sir?

24 A. Well there's a handwritten part on here which  
25 says "RESTRICTED" underlined.

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1 Q. And then --

2 A. I'm sorry. I mean, there's no, I mean,  
3 indication to me here on this piece of paper you've  
4 just given me that this is a document from BATCO or  
5 anywhere else.

6 Q. Well doesn't it say so at the bottom? It says  
7 "BAT Co Limited - Minnesota Tobacco Litigation."

8 A. All right.

9 Q. Do you see that?

10 MR. SHEFFLER: I object to that. It  
11 doesn't mean that it's -- it could come from anywhere  
12 and be found in BATCO's files, Counsel. You know  
13 that. That's -- that's ambiguous and unfair.

14 A. Yeah, and I'm sorry, I don't fully understand  
15 the way these documents are -- are collected for  
16 tobacco litigation, but I did assume that the --  
17 this -- this bit at the bottom has been on all the  
18 documents so far and so it's not specific to any  
19 individual document.

20 Q. Now, sir, at the top of the document it says  
21 "Carcinogenicity"; right?

22 A. After saying "RESTRICTED" in handwritten,  
23 underlined "Nitrosamines: A Brief Summary," it then  
24 says "Carcinogenicity," yes.

25 Q. And it says "Nitrosamines are carcinogenic in

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1 animals at all dose levels examined, irrespective of  
2 whether they are administered in food, water or by  
3 inhalation"; correct?

4 A. I mean, that's what it says on this document,  
5 and to which source I'm not sure.

6 Q. And then it goes down to the bottom. If we look  
7 at the second-to-the-last paragraph, it begins "There  
8 is no 'safe' level for nitrosamines ..."; correct?

9 A. And there's a paragraph here which says "There  
10 is no 'safe' level for nitrosamines and,  
11 industrially, exposures will have to be reduced to  
12 the maximum practicable extent consistent with  
13 continued use," yeah.

14 Q. All right. Now earlier your answer referred to  
15 tobacco or cigarette packages. Did BATCO or any of  
16 the B.A.T. Group companies for that matter ever  
17 voluntarily place a statement on any of its tobacco  
18 packages, cigarette packages, that there were  
19 nitrosamines in the cigarettes?

20 A. I mean, as far as my understanding goes, no, we  
21 have never voluntarily placed on a package that there  
22 are nitrosamines in cigarettes. I know that matter  
23 has been discussed generally. Whether the general  
24 public will have any knowledge that nitrosamines are  
25 present in -- in tobacco smoke, in -- in bacon and a

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1 variety of other materials, I don't know.

2 I think what the message has been to the public  
3 generally comes through the health warnings and their  
4 statements, and that is that -- that smoking in the  
5 view of the public health authorities is a cause of  
6 lung cancer.

7 Q. Well, sir, isn't it a fact that the B.A.T. Group  
8 companies have never voluntarily placed any warning  
9 for the cigarette smoker on any of their cigarette  
10 packages?

11 MR. SHEFFLER: Objection, mischaracterizes  
12 prior testimony.

13 A. No, that is not correct, and what -- what you  
14 will see is that in -- in many -- or in several  
15 countries of the world where the governments hadn't  
16 set up regulations to require health warnings, we  
17 have voluntarily put on health warnings on our  
18 cigarette packages.

19 Q. That is after they were required in other  
20 countries; right?

21 A. I mean, I think that may be true in terms of a  
22 matter of history. What I was trying to -- to  
23 illustrate as a response to your -- to your previous  
24 question, that the fact is yes, we have voluntarily  
25 put on health warnings in countries where there was

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1 no legal requirement for us to do so.

2 Q. Well let's put it this way, state it this way:

3 None of the B.A.T. Group companies ever placed a -- a  
4 warning voluntarily on a cigarette package that was  
5 sold in the United States; isn't that true?

6 A. And I don't know the United States environment  
7 that well. Your -- your question may well be true.

8 Q. And, sir, isn't it a fact that we've seen policy  
9 documents today which showed that it was B.A.T.  
10 Industries' policy to fight cigarette warnings on  
11 packages?

12 MR. SHEFFLER: Objection, lack of  
13 foundation, overbroad, vague.

14 A. I mean, in the -- in the many documents you  
15 showed me today, I think I glanced or didn't have an  
16 opportunity to read something in -- in relation to  
17 your question there. I mean, I think the fact is  
18 that British-American Tobacco have gone along with  
19 public health authorities and put on health warnings,  
20 and in countries where there wasn't a legal  
21 requirement to do so, we have put on health warnings  
22 on our packages as a matter of international  
23 standard.

24 Q. "As a matter of international standard," do you  
25 mean that because it was done -- it was required

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1 someplace, that it was put on in other companies to  
2 be standardized?

3 MR. SHEFFLER: Objection to the form, also  
4 objection to the mischaracterization of testimony.

5 A. No, that wasn't what I meant at all. What I  
6 meant by that is that since there's a general  
7 acceptance in the -- in the public health community  
8 that smoking is a cause of cancer -- of lung cancer,  
9 sorry, that it -- it seemed appropriate for us to --  
10 to given that general consensus of view put on health  
11 warnings voluntarily.

12 Q. But it did not --

13 The B.A.T. Group did not do so voluntarily in  
14 the United States, did they?

15 MR. SHEFFLER: Objection. Counselor, these  
16 repetitive questions -- objection to asked and  
17 answered.

18 A. I think I answered that as, to my -- the best of  
19 my knowledge, no, that was not the case.

20 MR. SHEFFLER: Yeah, okay. Let's take a  
21 break.

22 THE REPORTER: Off the record, please.

23 (Recess taken.)

24 BY MS. WIVELL:

25 Q. Sir, I have had the court reporter hand you what

1 has been marked as Plaintiffs' Exhibit 598; correct?

2 A. Correct.

3 Q. And that is a document Bates numbered 104745492

4 as its first Bates number; right?

5 A. Correct.

6 Q. And there's some handwritten document -- or some

7 handwritten --

8 There's some handwriting at the top of the

9 document, and under that it says "Conclusions and

10 Evaluations"; right?

11 A. Yeah. It starts off talking about Lyon and --

12 and IARC, then says "V." or Roman numeral "V.

13 Conclusions and Evaluations."

14 Q. All right. Would you turn your attention to the

15 second page of the document.

16 MR. SHEFFLER: I'd like the -- I'd like the

17 record to reflect the identification of this

18 document. I think it's important for the -- for the

19 purposes of any questions. I mean, it's -- it's an

20 IARC monograph, Volume 3, final draft.

21 Q. Sir, turning to the second page of the document,

22 the first paragraph says at the end "... extensive

23 analysis of smoke shows cigarette smoking to be a

24 major source of exposure to tobacco-specific" nitro

25 "compounds, polynuclear aromatic compounds, aromatic

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1 amines and some other carcinogens"; correct?

2 A. It says "... tobacco-specific nitroso compounds,  
3 polynuclear aromatic compounds, aromatic amines and  
4 some other carcinogens," yeah.

5 Q. All right. Putting the document aside for a --  
6 a while, you would agree, sir, that in addition to  
7 the nitrosamine compounds that we were talking about  
8 earlier, B.A.T. Group analysis of cigarette smoke  
9 showed that polynuclear aromatic compounds existed  
10 within cigarette smoke; isn't that true?

11 A. I think that's absolutely true, that we've  
12 identified a variety of polynuclear aromatic  
13 compounds, sometimes referred to as polyaromatic  
14 hydrocarbons, I think.

15 Q. Right. And is benzopyrene one of those  
16 polyaromatic hydrocarbons?

17 A. Benzopyrene is a polyaromatic hydrocarbon.

18 Q. And it --

19 It was known within BATCO way back in the '50s  
20 that benzopyrene was a compound within cigarette  
21 smoke that was inhaled by smokers; right?

22 A. Well it was something that was very much brought  
23 to the forefront of science by -- by Dr. Wynder in  
24 the U.S. in terms of identifying benzopyrene as a  
25 component of tobacco smoke. And yes, I believe our

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1 research undertaken at British-American Tobacco  
2 has -- has -- has confirmed what he found, which was  
3 that benzopyrene is one of the components, albeit at  
4 fairly low concentrations, in tobacco smoke.

5 Q. Well, sir, when --

6 When the B.A.T. Group confirmed that benzopyrene  
7 was something that was being inhaled by smokers as  
8 part of them taking a puff of a cigarette, did the  
9 B.A.T. Group inform the public of that confirmation?

10 A. I mean, to my knowledge, no. British-American  
11 Tobacco didn't put out any press release or -- or  
12 whatever that said that benzopyrene was present in  
13 tobacco smoke. I mean, that certainly was known in  
14 terms of the -- in the research community in terms of  
15 what Dr. Wynder's done and I think in terms -- I  
16 mean, I don't know whether this is appropriately  
17 responsive to your question, but as far as I know, no  
18 other manufacturer of a product that contains --  
19 contains benzopyrene -- and obviously there are many  
20 products, food products, which do contain  
21 benzopyrene -- has ever released to public the fact  
22 that the benzopyrene's contained in their product.

23 Q. Well, sir, we're not talking about a food  
24 product here. We're talking about something which is  
25 inhaled in the lungs of smokers, aren't we?

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1 MR. SHEFFLER: Objection to the form of the  
2 question, argumentative.

3 A. And I think if you're talking about tobacco  
4 smoke, it is clear that some smokers inhale the smoke  
5 into their respiratory system.

6 Q. Sir, and isn't it a fact that when -- back in  
7 the '50s when BATCO was undertaking research on the  
8 issue of benzopyrene and cigarette smoke, that it was  
9 so secretive about that research that it used a code  
10 name for benzopyrene?

11 MR. SHEFFLER: Objection, speculation.

12 MR. FRANKEL: Object to form.

13 A. I mean, I've heard I think that there was  
14 perhaps a code name referred to as benzopyrene. The  
15 fact is that, I mean, the -- the -- the notion or, I  
16 mean, the scientific data that identified benzopyrene  
17 in tobacco smoke was common scientific knowledge as  
18 created by Dr. Wynder and other scientists, so it  
19 would be surprising that that would be anything that  
20 one would need to keep secret in that it was -- it  
21 was public or at least certainly scientific knowledge  
22 that that was the case.

23 Q. Well, sir, it was not scientific knowledge that  
24 BATCO had confirmed the presence of benzopyrene in  
25 the tobacco smoke back in the '50s; isn't that true?

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1 MR. SHEFFLER: Objection, mischaracterizes  
2 the testimony.

3 A. Did the scientific community understand that  
4 British-American Tobacco -- I'm not sure quite when  
5 the experiments were undertaken to be able to  
6 identify benzopyrene. It's quite a complex thing to  
7 do. The levels are quite low and it takes pretty  
8 significant analytical work to be able to measure  
9 benzopyrene in tobacco smoke.

10 When exactly British-American Tobacco achieved  
11 duplication of the kind of experimental techniques  
12 that the likes of Dr. Wynder had, I'm uncertain.

13 Q. Well isn't it a fact that at the time Wynder  
14 published his papers, that no research had been done  
15 at BATCO on the subject of whether cigarette smoking  
16 causes cancer and that -- or let's put it that way.  
17 Let me rephrase the question.

18 Isn't it a fact that at the time Wynder  
19 published his papers, that BATCO had done no research  
20 on the subject of whether cigarette smoking caused  
21 cancer?

22 MR. SHEFFLER: Object to the form. Wynder  
23 has published papers for many, many, many years. Can  
24 you give -- be more specific, Counselor?

25 MS. WIVELL: His first published papers,

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1 sir.

2 A. I'm not sure when Wynder first published papers  
3 in relation to this. My -- my guess is certainly  
4 there was some publications by -- by Dr. Wynder in  
5 the 1950s, mid-1950s, very much at the same time as  
6 British-American Tobacco was setting up research  
7 laboratories to -- to look at this issue. As to what  
8 research or -- or certainly as to what the company  
9 was looking at in terms of what external research was  
10 going on, I'm not quite certain in that period.

11 Q. Well isn't it a fact that the research that was  
12 done at British-American Tobacco was so secret that  
13 that research was referred to under a code name?

14 MR. SHEFFLER: Objection. The question was  
15 asked and answered.

16 A. Yeah, and my answer was that I believe that  
17 was -- was the case, and it -- it somewhat surprises  
18 me in that it was certainly public scientific  
19 knowledge that benzopyrene was to be found in tobacco  
20 smoke at albeit extremely small levels.

21 (Plaintiffs' Exhibit 599 was marked  
22 for identification.)

23 BY MS. WIVELL:

24 Q. Sir, showing you what's been marked as  
25 Plaintiffs' Exhibit 599, this is a document that

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- 1 begins with the Bates number 105471399; correct?
- 2 A. That's correct.
- 3 Q. And it is research from the R&D department at
- 4 British-American Tobacco Company Limited; right?
- 5 A. Yes, it is.
- 6 Q. And it's entitled "SMOKE GROUP, Programme for
- 7 coming 12-16 week period"; right?
- 8 A. Correct.
- 9 Q. The author is D. G. Felton?
- 10 A. Correct.
- 11 Q. Now, sir, if you took -- take a look at the next
- 12 page, we see reference to work that was being set up
- 13 to look into the idea that there was a causal
- 14 relationship between ZEPHYR and cigarette smoking;
- 15 right?
- 16 A. That's what it states here, yes.
- 17 Q. And you understand "ZEPHYR" to mean "cancer";
- 18 right?
- 19 A. I mean, I'm not certain, but I believe it
- 20 probably refers to "lung cancer," not "cancer."
- 21 Q. All right. Now if we go on in this document, we
- 22 see there's a reference on the next page to BORSTAL,
- 23 B-O-R-S-T-A-L; correct?
- 24 A. Yes, it says "BORSTAL" here.
- 25 Q. And that refers to "benzopyrene"; isn't that

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1 true?

2 A. I believe that is the case. And it goes on to  
3 talk about condensed aromatic polycyclic  
4 hydrocarbons.

5 Q. All right. Now, you have no idea why this  
6 research was undertaken with these code names, do  
7 you, sir?

8 A. No. I actually have no idea why code names were  
9 used for those substances, particularly since the  
10 document also refers quite specifically to aromatic  
11 polycyclic hydrocarbons.

12 Q. All right. Now, sir, we've also talked about  
13 the fact that there are aromatic amines in cigarette  
14 smoke; correct?

15 A. Yes.

16 Q. All right. What are some of the aromatic amines  
17 that are present in cigarette smoke when a smoker  
18 takes a puff?

19 A. Well to get -- give you a complete list, maybe  
20 I'll refer to where the -- the U.S. Surgeon General,  
21 who in '64 gave a whole series of -- of substances  
22 and at that time he identified as being in -- in  
23 mainstream smoke, and in terms of, I mean, for  
24 example, nitrogen bases, a variety of substances were  
25 identified, including things like pyridine, nicotine,

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1 nornicotine and substituted pyridine bases and a  
2 whole list. I'm not sure. I think it probably is  
3 tabulated here, a whole list of substances identified  
4 at that time, in 1964, of substances that are found  
5 in tobacco smoke.

6 Q. All right. Well before the Surgeon General came  
7 out with his report in 1964, had British-American  
8 Tobacco Company or any of the B.A.T. Group companies  
9 informed the public that it knew that those amines  
10 were present in cigarette smoke?

11 A. As far as I'm aware, not.

12 Q. And isn't it a fact that before the Surgeon  
13 General came out with his report in 1964, none of the  
14 B.A.T. Group companies had alerted the public to the  
15 fact that polycyclic aromatic hydrocarbons were  
16 present in cigarette smoke?

17 A. Again, I gather that's the case.

18 Q. Now, sir, if we look back at Plaintiffs' Exhibit  
19 598 --

20 A. Sorry, 598?

21 Q. 598.

22 A. That is -- let me see. Yeah, I've got that  
23 one.

24 Q. There is a section entitled "Carcinogenicity in  
25 animals" beginning on the second page; right?

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1 A. This again is -- that report refers to the  
2 International Agency for Research on -- on Cancer's  
3 monograph, and yeah, the second page talks about  
4 "Carcinogenicity in animals."

5 Q. Well, sir, who wrote this document?

6 A. Let me have a look. It's not clear. I mean,  
7 what is scribbled -- oh, sorry. What is handwritten  
8 on the top says "Lyon 2 to 12 to 2 to 20, 19" -- I  
9 believe it's "85," but I'm not certain, and then it  
10 goes "IARC," which stands for the "International  
11 Agency for Research on Cancer," and I believe it says  
12 "Monograph Volume" -- oh, I can't really read it.  
13 Maybe "30."

14 MR. SHEFFLER: I think it's "3P."

15 A. "3P."

16 Q. Sir, you don't --

17 A. So, I mean, what my assumption would be is this  
18 is a -- a monograph written by the International  
19 Agency for Research on Cancer, who were based on --  
20 in Lyon.

21 MR. SHEFFLER: Actually it's "Monograph  
22 Volume 30," which is the --

23 THE WITNESS: Yeah, I think it is "30."

24 MR. SHEFFLER: -- final monograph.

25 Q. Sir, do you know that to be a fact?

1 A. No, I don't. From the piece of paper that  
2 you've given me, all -- and that's the only  
3 indication and I haven't had real time to look  
4 through all of this, but that's the only indication  
5 to me as to where this document comes from.

6 Q. Now, sir, if we turn back to the second page, we  
7 see a reference to "Carcinogenicity in animals";  
8 correct?

9 A. There's a highlighted -- under -- there's a  
10 subtitle underlined which says "Carcinogenicity in  
11 animals," yeah.

12 Q. And it goes on in that paragraph to refer to  
13 "Exposure of hamsters and rats to whole smoke results  
14 in the induction of malignant respiratory-tract  
15 tumors"; correct?

16 A. Yeah, it does say that.

17 Q. All right. And British-American Tobacco Company  
18 never informed the public that -- or the people  
19 smoking its cigarettes that exposure to smoke  
20 resulted in the induction of malignant  
21 respiratory-tract tumors; right?

22 MR. SHEFFLER: I object to the question as  
23 compound. Do you want to ask him whether they  
24 informed the public, however that's defined, or the  
25 people smoking its cigarettes?

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1 MS. WIVELL: All right, let me rephrase the  
2 question.

3 Q. British-American Tobacco Company never informed  
4 the public that smoking cigarettes exposed people to  
5 smoke which resulted in the induction -- had resulted  
6 in the induction of malignant respiratory-tract  
7 tumors in animals?

8 MR. SHEFFLER: Objection to the form of the  
9 question as "public" is undefined, if it's not meant  
10 to mean consumers.

11 A. To -- to answer your question, as far as I know,  
12 British-American Tobacco, for example, has not  
13 repeated the statements of -- of IARC, if this is an  
14 IARC document, which if it is Volume 30, IARC  
15 monograph, it's certainly very much part of the  
16 scientific -- the body of scientific review on these  
17 matters. Has British-American Tobacco specifically  
18 reissued some statements that IARC have made? No, I  
19 gather not.

20 Q. Well, sir, if we turn to the page that ends with  
21 Bates number 496, it talks about "Cancer in humans."  
22 Do you see that heading?

23 A. I see that subheading, yeah.

24 Q. And it says "Lung cancer is believed to be the  
25 most important cause of death from cancer in the

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1 world, with estimated total deaths in excess of  
2 1 million annually"; right?

3 A. That's what it says here. It's -- presumably  
4 this is the view of the International Agency for  
5 Research on Cancer.

6 Q. All right. Well whether it's their view or not,  
7 let me ask you this: Isn't it true that B.A.T.  
8 Industries or BATCO or any of the -- strike that.

9 Now whether it's their view or not, isn't it a  
10 fact that none of the B.A.T. Group companies have  
11 ever told smokers that lung cancer is the most  
12 important cause of death in the world?

13 A. I don't think that is -- is something we have  
14 said and I don't think that would perhaps be an  
15 accurate statement even that the public health  
16 authorities would say. I think what is likely is  
17 that cardiovascular disease is the most important  
18 death -- in terms of what it says here, is the most  
19 important death -- cause of death from -- from cancer  
20 in the world. I mean, that is certainly a view that  
21 clearly is being promoted by the International Agency  
22 for Research on Cancer in here. And no, I do not  
23 believe that that is something that British-American  
24 Tobacco has repeated.

25 Q. Well it goes on to say the major cause of death

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1 is cigarette smoking, primarily -- I'm sorry, strike  
2 that.

3 It goes on here to say "The major cause of ...  
4 disease is tobacco smoking, primarily of cigarettes";  
5 correct?

6 A. That's correct.

7 Q. And you would agree that none of the B.A.T.  
8 Group companies have ever told the public that the  
9 major cause of disease is tobacco smoking?

10 MR. SHEFFLER: Object to the form of the  
11 question.

12 A. Again, as far as I can -- as I know, I don't  
13 think anyone or British-American Tobacco has repeated  
14 what -- what the International Agency for Research on  
15 Cancer say in this document, and, I mean, certainly  
16 the statements here by the International Agency for  
17 Research on Cancer very much reflect what the World  
18 Health Organization would say on that matter, and  
19 that is certainly something which has been promoted  
20 extraordinarily widely by the World Health  
21 Organization.

22 Q. Well, sir, putting aside what other people might  
23 have said, I'm trying to find out what the B.A.T.  
24 Group has said, and isn't it a fact that the B.A.T.  
25 Group has never told the public that the major cause

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1 of disease is tobacco smoking, preliminary --  
2 primarily of cigarettes?

3 MR. SHEFFLER: Objection to statements of  
4 counsel, and I object that that precise question was  
5 asked and was precisely answered by the witness.

6 A. And -- and again, the answer is, I mean, to my  
7 knowledge, no, British-American Tobacco has not  
8 issued a -- a press release which repeats what the  
9 International Agency for Research on Cancer has said  
10 in this document.

11 Q. Well now, sir, do you agree that the risk of  
12 lung cancer in smokers is particularly dependent on  
13 the duration of smoking?

14 A. If we look at the epidemiological data that's  
15 been produced for many years and you look at that  
16 data as -- as it's revealed in -- in the various  
17 Surgeon General's report and in -- in the reports of  
18 the Independent Scientific Committee on Smoking and  
19 Health from the U.K., what they will say is that  
20 looking at epidemiology, the relative risk within  
21 groups of people would increase; therefore, I mean,  
22 the -- the incidence of -- of lung cancer increase if  
23 the duration of -- of smoking is longer.

24 Q. All right. Well, has BATCO or any of the B.A.T.  
25 Group companies ever told the public that the risk of

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1 cigarette -- of lung cancer is dependent on the  
2 duration of smoking?

3 A. I mean, I don't think British-American Tobacco  
4 has -- has specifically issued a press release or in  
5 any other way talked about that other than reflecting  
6 what the views of the public health authority have  
7 been. And clearly, I mean, even in the 1962 Royal  
8 College of Physicians report in London that was the  
9 view of the community, and certainly in the 1964 U.S.  
10 Surgeon General's report on smoking and health that  
11 was also the view.

12 Q. Move to strike as nonresponsive. Sir, my  
13 question is not what the -- what the view of the  
14 Surgeon General was. My question is whether any of  
15 the B.A.T. Group companies have ever told the public  
16 that essentially the risk of lung cancer is dependent  
17 on the duration of smoking.

18 MR. SHEFFLER: I -- I object. Again, that  
19 specific question was asked and it was specifically  
20 answered by the witness, and I object to counsel's  
21 statements as a predicate to the question.

22 MR. FRANKEL: I also object to -- to "the  
23 public," by which I'm not sure if you mean the U.S.  
24 public, the U. -- the British public, both or --

25 MS. WIVELL: If you have an objection,

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1 please, Counsel, just state the word "objection." I  
2 don't need you coaching the witness too.

3 MR. FRANKEL: That's --

4 MR. SHEFFLER: You know, that's really very  
5 improper. That is -- that's inappropriate. There  
6 has been no coaching of the witness in this  
7 deposition, and it's inappropriate for you to make  
8 such comments on the record.

9 MR. FRANKEL: It's an ambiguous question  
10 and that's -- that's the grounds for my objection and  
11 I'm stating it.

12 A. I'm sorry, can you repeat the question again.

13 Q. Certainly. My question is not what the view of  
14 the Surgeon General was, sir. My question is whether  
15 any of the B.A.T. Group companies have ever told the  
16 public that the risk of lung cancer is dependent on  
17 the duration of smoking.

18 MR. SHEFFLER: That question was asked and  
19 specifically answered by the witness, and I object to  
20 the repetitive -- repetitive nature of all of these  
21 questions.

22 A. And let me try and help with an answer again.

23 Excuse me. As far as I know -- excuse me a second.

24 Thanks.

25 As far as I know, British-American Tobacco have

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1 not precisely set out a -- a public statement talking  
2 about -- actually sorry, I'm -- I was choking. Can  
3 you repeat the question. I'll give you a -- a proper  
4 response.

5 Q. Certainly. My question is not what the view of  
6 the Surgeon General was, sir. My question is whether  
7 any of the B.A.T. Group companies have ever told the  
8 public that the risk of lung cancer is dependent on  
9 the duration of smoking.

10 MR. SHEFFLER: Same --

11 MR. FRANKEL: Same objection.

12 MR. SHEFFLER: Same objection.

13 A. I think that in various documents that we've  
14 certainly written in relation to smoking and health,  
15 I mean, those documents would certainly reflect what  
16 is certainly the statements of the public health  
17 authorities and what the statistical studies tend to  
18 show, which is if -- the greater the duration of  
19 smoke, the -- the greater the relative risk that's  
20 found in the epidemiological studies.

21 In terms of speaking to the public, no, we  
22 haven't made many public statements because generally  
23 in the public the information has been taken from --  
24 from the public health authorities. But where we  
25 have stated and certainly where there is

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1 epidemiological data that -- that shows a particular  
2 effect, we have never tried to state to the contrary  
3 that effect.

4 Q. Well have you ever told young smokers that the  
5 earlier they start smoking, the greater their  
6 individual risk of getting disease?

7 MR. SHEFFLER: Is -- is that the end of the  
8 question?

9 MS. WIVELL: (Nodding head.)

10 MR. SHEFFLER: I object to the assumptions  
11 in the question and -- and I object to the form.

12 A. If I or has British-American Tobacco  
13 specifically sent out messages to -- to young  
14 smokers, however that's defined, in relation to that,  
15 no, and again it's my view that the people who choose  
16 to smoke are well aware of -- of where the public  
17 health authorities have come out on this matter.  
18 Certainly in the United Kingdom there has been a  
19 whole series of programs by the U.K. government  
20 talking about what people should do if they -- they  
21 still choose to smoke, and that includes reduct --  
22 reducing the duration of smoking. It includes -- it  
23 includes changing behavior; for example, choosing  
24 lower-tar products and smoking those lower-tar  
25 products with -- with less puffs, et cetera.

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1 Q. Well, sir, it says here "Risk of lung cancer is  
2 particularly dependent on duration of smoking;  
3 therefore, the earlier the age at initiation of  
4 smoking, the greater the individual risk"; correct?

5 A. That's correct.

6 Q. And --

7 MR. SHEFFLER: Let the record reflect  
8 that -- that the counsel for plaintiffs is reading  
9 from Exhibit 598.

10 Q. And, sir, isn't it a fact that none of the  
11 B.A.T. Group companies have ever let smokers who  
12 smoke their cigarettes know that the earlier the age  
13 of initiation of smoking, the greater the individual  
14 risk?

15 MR. SHEFFLER: Objection to the form of the  
16 question, objection to the assumptions built into the  
17 question.

18 A. I mean, again the -- the question raises the  
19 issue of what is public knowledge on this issue, and  
20 clearly it is public knowledge as -- as presented  
21 certainly in the U.K. through the public health  
22 authorities and the U.S. through the public health  
23 authorities. Is the question have we repeated that?  
24 The answer is probably no. Is -- is the question  
25 have we done anything that -- which would take away

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1 from the public's view of -- of where the public  
2 health authorities have come out? The answer is no.  
3 Q. Well, sir, if you turn to the page that ends  
4 with Bates number 498, you see there the statement  
5 "Tobacco smoking (particularly of cigarettes) is an  
6 important cause of bladder cancer and cancer of the  
7 renal pelvis." Do you see that, sir?

8 MR. SHEFFLER: Again -- again let the  
9 record reflect that counsel's again reading from  
10 Exhibit 598, which has been identified for the  
11 record.

12 A. I'm sorry, I can't find that. The bottom bit  
13 talks about pancreatic cancer.

14 Q. The third --

15 The second complete paragraph, sir, begins with  
16 the statement "Tobacco smoking (particularly of  
17 cigarettes) is an important cause of bladder cancer  
18 and cancer of the renal pelvis"; right?

19 A. That's correct.

20 Q. And did any of the B.A.T. companies ever let the  
21 public know that cigarette smoking was an important  
22 cause of bladder cancer?

23 A. I mean, again my answer, as -- as in the  
24 previous questions, is that, to my knowledge, no,  
25 British-American Tobacco hasn't specifically set out

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1 to inform the public of the views of the  
2 International Agency for Research on Cancer, which --  
3 whose views I think are -- are promoted certainly  
4 by -- by those who have been discussing this matter  
5 in the public.

6 Q. Well, sir, international associations aside, it  
7 is a fact, isn't it, that none of the B.A.T. Group  
8 companies have ever informed the public that tobacco  
9 smoking was an important cause of bladder or renal  
10 cancer?

11 MR. SHEFFLER: Objection to -- objection to  
12 the form of the question. You can't --

13 MS. WIVELL: All right, then I'll restate  
14 the question.

15 MR. SHEFFLER: You can't read from a  
16 document and then say put the document aside and ask  
17 the question.

18 BY MS. WIVELL:

19 Q. Sir, statements of international associations or  
20 Surgeon Generals aside, isn't it true that the B.A.T.  
21 Group companies have never told the public that  
22 tobacco smoking is an important cause of bladder  
23 cancer?

24 MR. SHEFFLER: Objection to the form of the  
25 question, same objection.

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1 A. British-American Tobacco has never issued a  
2 release to -- to that effect to confirm what the  
3 International Agency for Research on Cancer have been  
4 saying and -- and particularly saying through the  
5 World Health Organization, as far as I'm aware.

6 Q. Now, sir, this document goes on to talk about  
7 tobacco smoking being an -- an important cause of  
8 oro --

9 MR. SHEFFLER: Oropharyngeal.

10 THE WITNESS: Yeah.

11 MS. WIVELL: Thank you.

12 Q. And other kinds of cancers; correct?

13 A. Yeah, it says "oropharyngeal, hypopharyngeal,  
14 laryngeal and oesophageal cancers," yeah.

15 Q. And isn't it true that none of the B.A.T. Group  
16 companies have ever informed the public that smoking  
17 their cigarettes would cause those kinds of cancers?

18 MR. SHEFFLER: Let the record reflect again  
19 that counsel's reading from the document, that  
20 Exhibit 598.

21 MR. FRANKEL: I object to form.

22 A. And I think the answer again is -- is I do not  
23 believe that British-American Tobacco has -- has put  
24 a precise statement out, nor has it, I don't think,  
25 in terms of the public environment tried to take away

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1 from what the International Agency for Research on  
2 Cancer and -- and then obviously the World Health  
3 Organization has said in terms of its view on those  
4 matters.

5 Q. Sir, it's also true, isn't it, that the B.A.T.  
6 Group companies have never told the public that there  
7 is sufficient evidence that tobacco smoke is  
8 carcinogenic in human beings?

9 MR. FRANKEL: Same objection.

10 A. No. Again I think, I mean, given that it's the  
11 view of the International Agency for Research on  
12 Cancer and something that certainly the World Health  
13 Organization promotes as part of -- of its public  
14 health policy around the world, no, I do not believe  
15 that British-American Tobacco has repeated that  
16 statement.

17 MS. WIVELL: All right. Why don't we stop  
18 for the day.

19 THE REPORTER: Off the record, please.

20 (Deposition recessed at 5:28 o'clock  
21 p.m.)

22  
23  
24  
25

## 1 C E R T I F I C A T E

2 I, William C. LaBorde, hereby certify that  
3 I am qualified as a verbatim shorthand reporter; that  
4 I took in stenographic shorthand the testimony of  
5 CHRISTOPHER J. PROCTOR at the time and place  
6 aforesaid; and that the foregoing transcript  
7 consisting of pages 1 through 307 is a true and  
8 correct, full and complete transcription of said  
9 shorthand notes, to the best of my ability.

10 Dated at New York, New York, this 12 day of  
11 August 1997.

12

13

14

15 WILLIAM C. LaBORDE

16 Registered Professional Reporter

17 Notary Public

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## 1 C E R T I F I C A T E

2 I, CHRISTOPHER J. PROCTOR, the deponent,  
3 hereby certify that I have read the foregoing  
4 transcript consisting of pages 1 through 307, and  
5 that said transcript is a true and correct, full and  
6 complete transcription of my deposition, except per  
7 the attached corrections, if any.

8

9 (Please check one.)

10

11 \_\_\_\_ Yes, changes were made per the attached  
12 (no.) \_\_\_\_ pages.

13

14 \_\_\_\_ No changes were made.

15

16

17 CHRISTOPHER J. PROCTOR

18 Deponent

19

20 Sworn and subscribed to before me this day  
21 of 199\_\_.

22

23

24 Notary Public

25 My commission expires: (WCL)

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